

House File 2557

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HOUSE FILE 2557

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AN ACT
PROVIDING FOR THE REGULATION OF SECURITIES, PROVIDING FOR FEES
AND PENALTIES, AND PROVIDING AN EFFECTIVE DATE.
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
DIVISION I
UNIFORM SECURITIES ACT
ARTICLE 1
GENERAL PROVISIONS
Section 1. Section 502.102, Code Supplement 2003, is
amended by striking the section and inserting in lieu thereof
the following:
502.102 DEFINITIONS.
In this chapter, unless the context otherwise requires:
1. "Administrator" means the commissioner of insurance or
the deputy appointed pursuant to section 502.601.
2. "Agent" means an individual, other than a broker=
dealer, who represents a broker=dealer in effecting or
attempting to effect purchases or sales of securities or
represents an issuer in effecting or attempting to effect
purchases or sales of the issuer's securities. But a partner,
officer, or director of a broker=dealer or issuer, or an
individual having a similar status or performing similar
functions, is an agent only if the individual otherwise comes
within the term. The term does not include an individual
excluded by rule adopted or order issued under this chapter.
2A. "Agricultural cooperative association" means an entity
which is structured and operated on a cooperative basis
pursuant to 26 U.S.C. } 1381(a) and which meets the
definitional requirement of an association as provided in 12
U.S.C. } 1141j(c) or 7 U.S.C. } 291, if the association is
organized as any one of the following:
a. A farmers cooperative association as defined in section
10.1.
b. An association of persons organized pursuant to chapter
497 for purposes of conducting an agricultural or dairy
business on a cooperative plan, as described in section 497.1.
c. A cooperative association organized pursuant to chapter
498 for purposes of conducting an agricultural, livestock,
horticultural, or dairy business on a cooperative plan and
acting as a cooperative selling agency, as described in
section 498.2.
d. An agricultural association as defined in section 499.2
and organized pursuant to chapter 499.
e. A cooperative organized under chapter 501 which may
acquire or otherwise obtain or lease agricultural land in this
state as provided in section 501.103.
f. Any other entity which is organized on a cooperative
basis under the laws of this state for the purpose of engaging
in the activities of an agricultural association as defined in
section 499.2.
3. "Bank" means any of the following:
a. A banking institution organized under the laws of the
United States.
b. A member bank of the United States federal reserve
system.
c. Any other banking institution, whether incorporated or
not, doing business under the laws of a state or of the United
States, a substantial portion of the business of which
consists of receiving deposits or exercising fiduciary powers
similar to those permitted to be exercised by national banks
under the authority of the office of the comptroller of the
currency of the United States pursuant to Pub. L. No. 87=722,
} 1, 12 U.S.C. } 92a, and which is supervised and examined by
a state or federal agency having supervision over banks, and
which is not operated for the purpose of evading this chapter.
d. A receiver, conservator, or other liquidating agent of
any institution or firm included in paragraph "a", "b", or
"c".
4. "Broker=dealer" means a person engaged in the business
of effecting transactions in securities for the account of
others or for the person's own account. The term does not

3 6 include any of the following:

3 7 a. An agent.

3 8 b. An issuer.

3 9 c. A bank or savings institution if its activities as a

3 10 broker-dealer are limited to those specified in section

3 11 3(a)(4)(B)(i) through (vi), section 3(a)(4)(B)(vii) if the

3 12 offer and sale of private securities offerings are limited to

3 13 nonconsumer transactions that are not primarily for personal,

3 14 family, or household purposes, section 3(a)(4)(B)(viii)

3 15 through (x), or section 3(a)(4)(B)(xi) if limited to

3 16 unsolicited transactions all as provided in the Securities

3 17 Exchange Act of 1934, 15 U.S.C. } 78c(a)(4); in section

3 18 3(a)(5)(B), and 3(a)(5)(C) of the Securities Exchange Act of

3 19 1934, 15 U.S.C. } 78c(a)(4) and (5); or a bank that satisfies

3 20 the conditions described in section 3(a)(4)(E) of the

3 21 Securities Exchange Act of 1934, 15 U.S.C. } 78c(a)(4).

3 22 d. An international banking institution.

3 23 e. A person excluded by rule adopted or order issued under
3 24 this chapter.

3 25 5. "Depository institution" means any of the following:

3 26 a. A bank.

3 27 b. A savings institution, trust company, credit union, or

3 28 similar institution that is organized or chartered under the

3 29 laws of a state or of the United States, authorized to receive

3 30 deposits, and supervised and examined by an official or agency

3 31 of a state or the United States if its deposits or share

3 32 accounts are insured to the maximum amount authorized by

3 33 statute by the federal deposit insurance corporation, the

3 34 national credit union share insurance fund, or a successor

3 35 authorized by federal law. The term does not include any of
4 1 the following:

4 2 (1) An insurance company or other organization primarily
4 3 engaged in the business of insurance.

4 4 (2) A Morris plan bank.

4 5 (3) An industrial loan company.

4 6 6. "Federal covered investment adviser" means a person
4 7 registered under the Investment Advisers Act of 1940.

4 8 7. "Federal covered security" means a security that is, or
4 9 upon completion of a transaction will be, a covered security

4 10 under section 18(b) of the Securities Act of 1933, 15 U.S.C. }
4 11 77r(b), or rules or regulations adopted pursuant to that

4 12 provision.

4 13 8. "Filing" means the receipt under this chapter of a
4 14 record by the administrator or a designee of the
4 15 administrator.

4 16 9. "Fraud", "deceit", and "defraud" are not limited to
4 17 common law deceit.

4 18 10. "Guaranteed" means guaranteed as to payment of all
4 19 principal and all interest.

4 20 11. "Institutional investor" means any of the following,
4 21 whether acting for itself or for others in a fiduciary
4 22 capacity:

4 23 a. A depository institution or international banking
4 24 institution.

4 25 b. An insurance company.

4 26 c. A separate account of an insurance company.

4 27 d. An investment company as defined in the Investment
4 28 Company Act of 1940.

4 29 e. A broker-dealer registered under the Securities
4 30 Exchange Act of 1934.

4 31 f. An employee pension, profit-sharing, or benefit plan if
4 32 the plan has total assets in excess of five million dollars or

4 33 its investment decisions are made by a named fiduciary, as

4 34 defined in the Employee Retirement Income Security Act of

4 35 1974, that is a broker-dealer registered under the Securities

5 1 Exchange Act of 1934, an investment adviser registered or

5 2 exempt from registration under the Investment Advisers Act of

5 3 1940, an investment adviser registered under this chapter, a

5 4 depository institution, or an insurance company.

5 5 g. A plan established and maintained by a state, a

5 6 political subdivision of a state, or an agency or

5 7 instrumentality of a state or a political subdivision of a

5 8 state for the benefit of its employees, if the plan has total

5 9 assets in excess of five million dollars or its investment

5 10 decisions are made by a duly designated public official or by

5 11 a named fiduciary, as defined in the Employee Retirement

5 12 Income Security Act of 1974, that is a broker-dealer

5 13 registered under the Securities Exchange Act of 1934, an

5 14 investment adviser registered or exempt from registration

5 15 under the Investment Advisers Act of 1940, an investment

5 16 adviser registered under this chapter, a depository

5 17 institution, or an insurance company.
5 18 h. A trust, if it has total assets in excess of five
5 19 million dollars, its trustee is a depository institution, and
5 20 its participants are exclusively plans of the types identified
5 21 in paragraph "f" or "g", regardless of the size of their
5 22 assets, except a trust that includes as participants self=
5 23 directed individual retirement accounts or similar self=
5 24 directed plans.
5 25 i. An organization described in section 501(c)(3) of the
5 26 Internal Revenue Code, 26 U.S.C. } 501(c)(3), corporation,
5 27 Massachusetts trust or similar business trust, limited
5 28 liability company, or partnership, not formed for the specific
5 29 purpose of acquiring the securities offered, with total assets
5 30 in excess of five million dollars.
5 31 j. A small business investment company licensed by the
5 32 small business administration under section 301(c) of the
5 33 Small Business Investment Act of 1958, 15 U.S.C. } 681(c),
5 34 with total assets in excess of five million dollars.
5 35 k. A private business development company as defined in
6 1 section 202(a)(22) of the Investment Advisers Act of 1940, 15
6 2 U.S.C. } 80b-2(a)(22), with total assets in excess of five
6 3 million dollars.
6 4 l. A federal covered investment adviser acting for its own
6 5 account.
6 6 m. A "qualified institutional buyer" as defined in Rule
6 7 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted by the
6 8 securities and exchange commission under the Securities Act of
6 9 1933, 17 C.F.R. } 230.144A.
6 10 n. A "major U.S. institutional investor" as defined in
6 11 Rule 15a-6(b)(4)(i) adopted by the securities and exchange
6 12 commission under the Securities Exchange Act of 1934, 17
6 13 C.F.R. } 240.15a-6.
6 14 o. Any other person, other than an individual, of
6 15 institutional character with total assets in excess of five
6 16 million dollars not organized for the specific purpose of
6 17 evading this chapter.
6 18 p. Any other person specified by rule adopted or order
6 19 issued under this chapter.
6 20 12. "Insurance company" means a company organized as an
6 21 insurance company whose primary business is writing insurance
6 22 or reinsuring risks underwritten by insurance companies and
6 23 which is subject to supervision by the insurance commissioner
6 24 or a similar official or agency of a state.
6 25 13. "Insured" means insured as to payment of all principal
6 26 and all interest.
6 27 13A. "Interest at the legal rate" means the interest rate
6 28 for judgments specified in section 535.3.
6 29 14. "International banking institution" means an
6 30 international financial institution of which the United States
6 31 is a member and whose securities are exempt from registration
6 32 under the Securities Act of 1933.
6 33 15. "Investment adviser" means a person that, for
6 34 compensation, engages in the business of advising others,
6 35 either directly or through publications or writings, as to the
7 1 value of securities or the advisability of investing in,
7 2 purchasing, or selling securities or that, for compensation
7 3 and as a part of a regular business, issues or promulgates
7 4 analyses or reports concerning securities. The term includes
7 5 a financial planner or other person that, as an integral
7 6 component of other financially related services, provides
7 7 investment advice to others for compensation as part of a
7 8 business or that holds itself out as providing investment
7 9 advice to others for compensation. The term does not include
7 10 any of the following:
7 11 a. An investment adviser representative.
7 12 b. A lawyer, accountant, engineer, or teacher whose
7 13 performance of investment advice is solely incidental to the
7 14 practice of the person's profession.
7 15 c. A broker-dealer or its agents whose performance of
7 16 investment advice is solely incidental to the conduct of
7 17 business as a broker-dealer and who does not receive special
7 18 compensation for the investment advice.
7 19 d. A publisher of a bona fide newspaper, news magazine, or
7 20 business or financial publication of general and regular
7 21 circulation.
7 22 e. A federal covered investment adviser.
7 23 f. A bank or savings institution.
7 24 g. Any other person that is excluded by the Investment
7 25 Advisers Act of 1940 from the definition of investment
7 26 adviser.
7 27 h. Any other person excluded by rule adopted or order

7 28 issued under this chapter.

7 29 16. "Investment adviser representative" means an
7 30 individual employed by or associated with an investment
7 31 adviser or federal covered investment adviser and who makes
7 32 any recommendations or otherwise gives investment advice
7 33 regarding securities, manages accounts or portfolios of
7 34 clients, determines which recommendation or advice regarding
7 35 securities should be given, provides investment advice or
8 1 holds oneself out as providing investment advice, receives
8 2 compensation to solicit, offer, or negotiate for the sale of
8 3 or for selling investment advice, or supervises employees who
8 4 perform any of the foregoing. The term does not include an
8 5 individual who does or is any of the following:

8 6 a. Performs only clerical or ministerial acts.

8 7 b. Is an agent whose performance of investment advice is
8 8 solely incidental to the individual acting as an agent and who
8 9 does not receive special compensation for investment advisory
8 10 services.

8 11 c. Is employed by or associated with a federal covered
8 12 investment adviser, unless the individual has a "place of
8 13 business" in this state as that term is defined by rule
8 14 adopted by the securities and exchange commission under
8 15 section 203A of the Investment Advisers Act of 1940, 15 U.S.C.
8 16 } 80b-3a, and is any of the following:

8 17 (1) An "investment adviser representative" as that term is
8 18 defined by rule adopted under section 203A of the Investment
8 19 Advisers Act of 1940, 15 U.S.C. } 80b-3a.

8 20 (2) Not a "supervised person" as that term is defined in
8 21 Section 202(a)(25) of the Investment Advisers Act of 1940, 15
8 22 U.S.C. } 80b-2(a)(25).

8 23 d. Is excluded by rule adopted or order issued under this
8 24 chapter.

8 25 17. "Issuer" means a person that issues or proposes to
8 26 issue a security, subject to all of the following:

8 27 a. The issuer of a voting trust certificate, collateral
8 28 trust certificate, certificate of deposit for a security, or
8 29 share in an investment company without a board of directors or
8 30 individuals performing similar functions is the person
8 31 performing the acts and assuming the duties of depositor or
8 32 manager pursuant to the trust or other agreement or instrument
8 33 under which the security is issued.

8 34 b. The issuer of an equipment trust certificate or similar
8 35 security serving the same purpose is the person by which the
9 1 property is or will be used or to which the property or
9 2 equipment is or will be leased or conditionally sold or that
9 3 is otherwise contractually responsible for assuring payment of
9 4 the certificate.

9 5 c. The issuer of a fractional undivided interest in an
9 6 oil, gas, or other mineral lease or in payments out of
9 7 production under a lease, right, or royalty is the owner of an
9 8 interest in the lease or in payments out of production under a
9 9 lease, right, or royalty, whether whole or fractional, that
9 10 creates fractional interests for the purpose of sale.

9 11 d. With respect to a viatical settlement contract,
9 12 "issuer" means a person involved in creating, transferring, or
9 13 selling to an investor any interest in such a contract,
9 14 including but not limited to fractional or pooled interests,
9 15 but does not include an agent or a broker-dealer.

9 16 18. "Nonissuer transaction" or "nonissuer distribution"
9 17 means a transaction or distribution not directly or indirectly
9 18 for the benefit of the issuer.

9 19 19. "Offer to purchase" includes an attempt or offer to
9 20 obtain, or solicitation of an offer to sell, a security or
9 21 interest in a security for value. The term does not include a
9 22 tender offer that is subject to section 14(d) of the
9 23 Securities Exchange Act of 1934, 15 U.S.C. } 78n(d).

9 24 20. "Person" means an individual; corporation; business
9 25 trust; estate; trust; partnership; limited liability company;
9 26 association; joint venture; government; governmental
9 27 subdivision, agency, or instrumentality; public corporation;
9 28 or any other legal or commercial entity.

9 29 21. "Place of business" of a broker-dealer, an investment
9 30 adviser, or a federal covered investment adviser means any of
9 31 the following:

9 32 a. An office at which the broker-dealer, investment
9 33 adviser, or federal covered investment adviser regularly
9 34 provides brokerage or investment advice or solicits, meets
9 35 with, or otherwise communicates with customers or clients.

10 1 b. Any other location that is held out to the general
10 2 public as a location at which the broker-dealer, investment
10 3 adviser, or federal covered investment adviser provides

10 4 brokerage or investment advice or solicits, meets with, or
10 5 otherwise communicates with customers or clients.

10 6 22. "Predecessor chapter" means this chapter as it existed
10 7 on December 31, 2004.

10 8 23. "Price amendment" means the amendment to a
10 9 registration statement filed under the Securities Act of 1933
10 10 or, if an amendment is not filed, the prospectus or prospectus
10 11 supplement filed under the Securities Act of 1933 that
10 12 includes a statement of the offering price, underwriting and
10 13 selling discounts or commissions, amount of proceeds,
10 14 conversion rates, call prices, and other matters dependent
10 15 upon the offering price.

10 16 24. "Principal place of business" of a broker=dealer or an
10 17 investment adviser means the executive office of the broker=
10 18 dealer or investment adviser from which the officers,
10 19 partners, or managers of the broker=dealer or investment
10 20 adviser direct, control, and coordinate the activities of the
10 21 broker=dealer or investment adviser.

10 22 25. "Record", except in the phrases "of record", "official
10 23 record", and "public record", means information that is
10 24 inscribed on a tangible medium or that is stored in an
10 25 electronic or other medium and is retrievable in perceivable
10 26 form.

10 27 26. "Sale" includes every contract of sale, contract to
10 28 sell, or disposition of, a security or interest in a security
10 29 for value, and "offer to sell" includes every attempt or offer
10 30 to dispose of, or solicitation of an offer to purchase, a
10 31 security or interest in a security for value. Both terms
10 32 include all of the following:

10 33 a. A security given or delivered with, or as a bonus on
10 34 account of, a purchase of securities or any other thing
10 35 constituting part of the subject of the purchase and having
11 1 been offered and sold for value.

11 2 b. A gift of assessable stock involving an offer and sale.

11 3 c. A sale or offer of a warrant or right to purchase or
11 4 subscribe to another security of the same or another issuer
11 5 and a sale or offer of a security that gives the holder a
11 6 present or future right or privilege to convert the security
11 7 into another security of the same or another issuer, including
11 8 an offer of the other security.

11 9 27. "Securities and exchange commission" means the United
11 10 States securities and exchange commission.

11 11 27A. "Securities bureau" means the securities bureau of
11 12 the insurance division of the department of commerce.

11 13 28. "Security" means a note; stock; treasury stock;
11 14 security future; bond; debenture; evidence of indebtedness;
11 15 certificate of interest or participation in a profit=sharing
11 16 agreement; collateral trust certificate; preorganization
11 17 certificate or subscription; transferable share; investment
11 18 contract; voting trust certificate; certificate of deposit for
11 19 a security; fractional undivided interest in oil, gas, or
11 20 other mineral rights; put, call, straddle, option, or
11 21 privilege on a security, certificate of deposit, or group or
11 22 index of securities, including an interest therein or based on
11 23 the value thereof; put, call, straddle, option, or privilege
11 24 entered into on a national securities exchange relating to
11 25 foreign currency; or, in general, an interest or instrument
11 26 commonly known as a "security"; or a certificate of interest
11 27 or participation in, temporary or interim certificate for,
11 28 receipt for, guarantee of, or warrant or right to subscribe to
11 29 or purchase, any of the foregoing. All of the following shall
11 30 apply to the term:

11 31 a. It includes both a certificated and an uncertificated
11 32 security.

11 33 b. It does not include an insurance or endowment policy or
11 34 annuity contract under which an insurance company promises to
11 35 pay a fixed or variable sum of money either in a lump sum or
12 1 periodically for life or other specified period.

12 2 c. It does not include any of the following:

12 3 (1) An interest in a contributory or noncontributory
12 4 pension or welfare plan subject to the Employee Retirement
12 5 Income Security Act of 1974.

12 6 (2) A certificate or tax credit issued or transferred
12 7 pursuant to chapter 15E, division VII.

12 8 d. It includes an investment in a common enterprise with
12 9 the expectation of profits to be derived primarily from the
12 10 efforts of a person other than the investor and a "common
12 11 enterprise" means an enterprise in which the fortunes of the
12 12 investor are interwoven with those of either the person
12 13 offering the investment, a third party, or other investors.

12 14 e. It includes as a security an interest in a limited

12 15 liability company or in a limited liability partnership or any
12 16 class or series of such interest, including any fractional or
12 17 other interest in such interest, provided "security" does not
12 18 include an interest in a limited liability company or a
12 19 limited liability partnership if the person claiming that such
12 20 an interest is not a security proves that all of the members
12 21 of the limited liability company or limited liability
12 22 partnership are actively engaged in the management of the
12 23 limited liability company or limited liability partnership;
12 24 provided that the evidence that members vote or have the right
12 25 to vote, or the right to information concerning the business
12 26 and affairs of the limited liability company or limited
12 27 liability partnership, or the right to participate in
12 28 management, shall not establish, without more, that all
12 29 members are actively engaged in the management of the limited
12 30 liability company or limited liability partnership.

12 31 f. It includes a viatical settlement investment contract.

12 32 29. "Self-regulatory organization" means a national
12 33 securities exchange registered under the Securities Exchange
12 34 Act of 1934, a national securities association of broker=
12 35 dealers registered under the Securities Exchange Act of 1934,
13 1 a clearing agency registered under the Securities Exchange Act
13 2 of 1934, or the municipal securities rulemaking board
13 3 established under the Securities Exchange Act of 1934.

13 4 30. "Sign" means, with present intent to authenticate or
13 5 adopt a record, to do any of the following:

13 6 a. To execute or adopt a tangible symbol.

13 7 b. To attach or logically associate with the record an
13 8 electronic symbol, sound, or process.

13 9 31. "State" means a state of the United States, the
13 10 District of Columbia, Puerto Rico, the United States Virgin
13 11 Islands, or any territory or insular possession subject to the
13 12 jurisdiction of the United States.

13 13 31A. "Viatical settlement investment contract" means a
13 14 contract entered into by a viatical settlement purchaser, to
13 15 which the viator is not a party, to purchase a life insurance
13 16 policy or an interest in the death benefits of a life
13 17 insurance policy, which contract is entered into for the
13 18 purpose of deriving economic benefit.

13 19 Sec. 2. NEW SECTION. 502.103 REFERENCES TO FEDERAL
13 20 STATUTES.

13 21 "Securities Act of 1933", 15 U.S.C. } 77a et seq.;
13 22 "Securities Exchange Act of 1934", 15 U.S.C. } 78a et seq.;
13 23 "Public Utility Holding Company Act of 1935", 15 U.S.C. } 79
13 24 et seq.; "Investment Company Act of 1940", 15 U.S.C. } 80a=1
13 25 et seq.; "Investment Advisers Act of 1940", 15 U.S.C. } 80b=1
13 26 et seq.; "Employee Retirement Income Security Act of 1974", 29
13 27 U.S.C. } 1001 et seq.; "National Housing Act", 12 U.S.C. }
13 28 1701; "Commodity Exchange Act", 7 U.S.C. } 1 et seq.;
13 29 "Internal Revenue Code", 26 U.S.C. } 1 et seq.; "Securities
13 30 Investor Protection Act of 1970", 15 U.S.C. } 78aaa et seq.;
13 31 "Securities Litigation Uniform Standards Act of 1998", 112
13 32 Stat. 3227; "Small Business Investment Act of 1958", 15 U.S.C.
13 33 } 661 et seq.; and "Electronic Signatures in Global and
13 34 National Commerce Act", 15 U.S.C. } 7001 et seq. mean those
13 35 federal statutes and the rules and regulations adopted under
14 1 those federal statutes, as in effect on the effective date of
14 2 this Act.

14 3 Sec. 3. NEW SECTION. 502.104 REFERENCES TO FEDERAL
14 4 AGENCIES.

14 5 A reference in this chapter to an agency or department of
14 6 the United States is also a reference to a successor agency or
14 7 department.

14 8 Sec. 4. NEW SECTION. 502.105 ELECTRONIC RECORDS AND
14 9 SIGNATURES.

14 10 This chapter modifies, limits, and supersedes the federal
14 11 Electronic Signatures in Global and National Commerce Act, but
14 12 does not modify, limit, or supersede } 101(c) of that Act, 15
14 13 U.S.C. } 7001(c), or authorize electronic delivery of any of
14 14 the notices described in section 103(b) of that Act, 15 U.S.C.
14 15 } 7003(b). This chapter authorizes the filing of records and
14 16 signatures, when specified by provisions of this chapter or by
14 17 a rule adopted or order issued under this chapter, in a manner
14 18 consistent with section 104(a) of that Act, 15 U.S.C. }
14 19 7004(a).

14 20 ARTICLE 2

14 21 EXEMPTIONS FROM REGISTRATION OF SECURITIES

14 22 Sec. 5. Section 502.201, Code 2003, is amended by striking
14 23 the section and inserting in lieu thereof the following:

14 24 502.201 EXEMPT SECURITIES.

14 25 All of the following securities are exempt from the

14 26 requirements of sections 502.301 through 502.306 and 502.504:
14 27 1. UNITED STATES GOVERNMENT AND MUNICIPAL SECURITIES. A
14 28 security, including a revenue obligation or a separate
14 29 security as defined in rule 131, 17 C.F.R. } 230.131, adopted
14 30 by the securities and exchange commission under the Securities
14 31 Act of 1933, issued, insured, or guaranteed by the United
14 32 States; by a state; by a political subdivision of a state; by
14 33 a public authority, agency, or instrumentality of one or more
14 34 states; by a political subdivision of one or more states; or
14 35 by a person controlled or supervised by and acting as an
15 1 instrumentality of the United States under authority granted
15 2 by the Congress; or a certificate of deposit for any of the
15 3 foregoing.
15 4 2. FOREIGN GOVERNMENT SECURITIES. A security issued,
15 5 insured, or guaranteed by a foreign government with which the
15 6 United States maintains diplomatic relations, or any of its
15 7 political subdivisions, if the security is recognized as a
15 8 valid obligation by the issuer, insurer, or guarantor.
15 9 3. DEPOSITORY INSTITUTION AND INTERNATIONAL BANKING
15 10 INSTITUTION SECURITIES. A security issued by and representing
15 11 or that will represent an interest in or a direct obligation
15 12 of, or be guaranteed by any of the following:
15 13 a. An international banking institution.
15 14 b. A banking institution organized under the laws of the
15 15 United States; a member bank of the United States federal
15 16 reserve system; or a depository institution, a substantial
15 17 portion of the business of which consists or will consist of
15 18 receiving deposits or share accounts that are insured to the
15 19 maximum amount authorized by statute by the federal deposit
15 20 insurance corporation, the national credit union share
15 21 insurance fund, or a successor authorized by federal law or
15 22 exercising fiduciary powers that are similar to those
15 23 permitted for national banks under the authority of the
15 24 comptroller of the currency pursuant to Pub. L. No. 87-722, }
15 25 1, 12 U.S.C. } 92a.
15 26 c. Any other depository institution, unless by rule or
15 27 order the administrator proceeds under section 502.204.
15 28 4. INSURANCE COMPANY SECURITIES. A security issued by and
15 29 representing an interest in, or a debt of, or insured or
15 30 guaranteed by, an insurance company authorized to do business
15 31 in this state.
15 32 5. COMMON CARRIER AND PUBLIC UTILITY SECURITIES. A
15 33 security issued or guaranteed by a railroad, other common
15 34 carrier, public utility, or public utility holding company
15 35 that is any of the following:
16 1 a. Regulated in respect to its rates and charges by the
16 2 United States or a state.
16 3 b. Regulated in respect to the issuance or guarantee of
16 4 the security by the United States, a state, Canada, or a
16 5 Canadian province or territory.
16 6 c. A public utility holding company registered under the
16 7 Public Utility Holding Company Act of 1935 or a subsidiary of
16 8 such a registered holding company within the meaning of that
16 9 Act.
16 10 6. CERTAIN OPTIONS AND RIGHTS. A federal covered security
16 11 specified in section 18(b)(1) of the Securities Act of 1933,
16 12 15 U.S.C. } 77r(b)(1), or by rule adopted under that provision
16 13 or a security listed or approved for listing on another
16 14 securities market specified by rule under this chapter; a put
16 15 or a call option contract; a warrant; a subscription right on
16 16 or with respect to such securities; or an option or similar
16 17 derivative security on a security or an index of securities or
16 18 foreign currencies issued by a clearing agency registered
16 19 under the Securities Exchange Act of 1934 and listed or
16 20 designated for trading on a national securities exchange, a
16 21 facility of a national securities exchange, or a facility of a
16 22 national securities association registered under the
16 23 Securities Exchange Act of 1934 or an offer or sale, of the
16 24 underlying security in connection with the offer, sale, or
16 25 exercise of an option or other security that was exempt when
16 26 the option or other security was written or issued; or an
16 27 option or a derivative security designated by the securities
16 28 and exchange commission under section 9(b) of the Securities
16 29 Exchange Act of 1934, 15 U.S.C. } 78i(b).
16 30 7. NONPROFIT SECURITIES. A security issued by a person
16 31 organized and operated exclusively for religious, educational,
16 32 benevolent, fraternal, charitable, social, athletic, or
16 33 reformatory purposes, or as a chamber of commerce, and not for
16 34 pecuniary profit, no part of the net earnings of which inures
16 35 to the benefit of a private stockholder or other person, or a
17 1 security of a company that is excluded from the definition of

17 2 an investment company under section 3(c)(10)(B) of the
17 3 Investment Company Act of 1940, 15 U.S.C. } 80a-3(c)(10)(B);
17 4 except that with respect to the offer or sale of a note, bond,
17 5 debenture, or other evidence of indebtedness issued by such a
17 6 person, a rule may be adopted under this chapter limiting the
17 7 availability of this exemption by classifying securities,
17 8 persons, and transactions, imposing different requirements for
17 9 different classes, specifying with respect to paragraph "b"
17 10 the scope of the exemption and the grounds for denial or
17 11 suspension, and requiring an issuer to do any of the
17 12 following:

17 13 a. File a notice specifying the material terms of the
17 14 proposed offer or sale and copies of any proposed sales and
17 15 advertising literature to be used and provide that the
17 16 exemption becomes effective if the administrator does not
17 17 disallow the exemption within the period established by the
17 18 rule.

17 19 b. File a request for exemption authorization for which a
17 20 rule under this chapter may specify the scope of the
17 21 exemption, the requirement of an offering statement, the
17 22 filing of sales and advertising literature, the filing of
17 23 consent to service of process complying with section 502.611,
17 24 and grounds for denial or suspension of the exemption.

17 25 c. Register under section 502.304.

17 26 8A. COOPERATIVE ASSOCIATIONS. A stock or similar
17 27 security, including a patronage refund certificate, issued by
17 28 any of the following:

17 29 a. A cooperative housing corporation described in
17 30 paragraph 1 of subsection "b" of section 216 of the Internal
17 31 Revenue Code, if its activities are limited to the ownership,
17 32 leasing, management, or construction of residential properties
17 33 for its members, and activities incidental thereto.

17 34 b. A mutual or cooperative organization, including a
17 35 cooperative association organized in good faith under and for
18 1 any of the purposes enumerated in chapter 497, 498, 499, or
18 2 501, that deals in commodities or supplies goods or services
18 3 in transactions primarily with and for the benefit of its
18 4 members, if all of the following apply:

18 5 (1) Such stock or similar security is part of a class
18 6 issuable only to persons who deal in commodities with, or
18 7 obtain goods or services from, the issuer.

18 8 (2) Such stock or similar security is transferable only to
18 9 the issuer or a successor in interest of the transferor who
18 10 qualifies for membership in such mutual or cooperative
18 11 organization.

18 12 (3) No dividends other than patronage refunds are payable
18 13 to holders of such stock or similar security except on a
18 14 complete or partial liquidation.

18 15 8B. AGRICULTURAL COOPERATIVE ASSOCIATIONS. A security
18 16 issued by an agricultural cooperative association, provided
18 17 all of the following conditions are satisfied:

18 18 a. A commission or remuneration must not be paid or
18 19 provided either directly or indirectly for the sale, except as
18 20 permitted by the administrator by rule or by order issued upon
18 21 written application showing good cause for allowance of a
18 22 commission or other remuneration.

18 23 b. If the securities to be issued are notes or other
18 24 evidences of indebtedness and are issued after July 1, 1991,
18 25 the issuer must file with the administrator a written notice
18 26 specifying the name of the issuer, the date of the issuer's
18 27 organization, the name of a contact person, a copy of the
18 28 issuer's current audited financial statement, the types of
18 29 security or securities to be offered, and the class of persons
18 30 to whom the offer will be made in accordance with such rules
18 31 as prescribed by the administrator.

18 32 9. EQUIPMENT TRUST CERTIFICATE. An equipment trust
18 33 certificate with respect to equipment leased or conditionally
18 34 sold to a person, if any security issued by the person would
18 35 be exempt under this section or would be a federal covered
19 1 security under section 18(b)(1) of the Securities Act of 1933,
19 2 15 U.S.C. } 77r(b)(1).

19 3 9A. ECONOMIC DEVELOPMENT CORPORATIONS. Any security
19 4 issued by a corporation formed under chapter 496B.

19 5 9B. AGRICULTURAL DEVELOPMENT AUTHORITY. Any security
19 6 issued by the agricultural development authority under chapter
19 7 175.

19 8 9C. MEMBERSHIP CAMPGROUNDS. Any security representing a
19 9 membership camping contract which is registered pursuant to
19 10 section 557B.2 or exempt under section 557B.4.

19 11 9D. TIME=SHARES. Any security representing a time=share
19 12 interval as defined in section 557A.2.

19 13 9E. VIATICAL SETTLEMENT CONTRACTS. A viatical settlement
19 14 contract, or fractional or pooled interest in such contract,
19 15 provided any of the following conditions are satisfied:
19 16 a. The assignment, transfer, sale, devise, or bequest of a
19 17 death benefit of a life insurance policy or contract is made
19 18 by the viator to an insurance company as provided under Title
19 19 XIII, subtitle 1.
19 20 b. The assignment, transfer, sale, devise, or bequest of a
19 21 life insurance policy or contract, for any value less than the
19 22 expected death benefit, is made by the viator to a family
19 23 member or other person who enters into no more than one such
19 24 agreement in a calendar year.
19 25 c. A life insurance policy or contract is assigned to a
19 26 bank, savings bank, savings and loan association, credit
19 27 union, or other licensed lending institution as collateral for
19 28 a loan.
19 29 d. Accelerated benefits are exercised as provided in the
19 30 life insurance policy or contract and consistent with
19 31 applicable law.
19 32 e. The assignment, transfer, sale, devise, or bequest of
19 33 the death benefit or ownership of a life insurance policy or
19 34 contract made by the policyholder or contract owner to a
19 35 viatical settlement provider, if the viatical settlement
20 1 transaction complies with chapter 508E, including rules
20 2 adopted pursuant to that chapter.
20 3 Sec. 6. Section 502.202, Code Supplement 2003, is amended
20 4 by striking the section and inserting in lieu thereof the
20 5 following:
20 6 NEW SECTION. 502.202 EXEMPT TRANSACTIONS.
20 7 The following transactions are exempt from the requirements
20 8 of sections 502.301 through 502.306 and 502.504:
20 9 1. ISOLATED NONISSUER TRANSACTIONS. An isolated nonissuer
20 10 transaction, whether effected by or through a broker-dealer or
20 11 not.
20 12 2. NONISSUER TRANSACTIONS IN SPECIFIED OUTSTANDING
20 13 SECURITIES. A nonissuer transaction by or through a broker=
20 14 dealer registered, or exempt from registration, under this
20 15 chapter, and a resale transaction by a sponsor of a unit
20 16 investment trust registered under the Investment Company Act
20 17 of 1940, provided that for either transaction, the security is
20 18 of a class that has been outstanding in the hands of the
20 19 public for at least ninety days, if, at the date of the
20 20 transaction, all of the following apply:
20 21 a. The issuer of the security is engaged in business, the
20 22 issuer is not in the organizational stage or in bankruptcy or
20 23 receivership, and the issuer is not a blank check, blind pool,
20 24 or shell company that has no specific business plan or purpose
20 25 or has indicated that its primary business plan is to engage
20 26 in a merger or combination of the business with, or an
20 27 acquisition of, an unidentified person.
20 28 b. The security is sold at a price reasonably related to
20 29 its current market price.
20 30 c. The security does not constitute the whole or part of
20 31 an unsold allotment to, or a subscription or participation by,
20 32 the broker-dealer as an underwriter of the security or a
20 33 redistribution.
20 34 d. A nationally recognized securities manual or its
20 35 electronic equivalent designated by rule adopted or order
21 1 issued under this chapter or a record filed with the
21 2 securities and exchange commission that is publicly available
21 3 contains all of the following:
21 4 (1) A description of the business and operations of the
21 5 issuer.
21 6 (2) The names of the issuer's executive officers and the
21 7 names of the issuer's directors, if any.
21 8 (3) An audited balance sheet of the issuer as of a date
21 9 within eighteen months before the date of the transaction or,
21 10 in the case of a reorganization or merger when the parties to
21 11 the reorganization or merger each had an audited balance
21 12 sheet, and a pro forma balance sheet for the combined
21 13 organization.
21 14 (4) An audited income statement for each of the issuer's
21 15 two immediately previous fiscal years or for the period of
21 16 existence of the issuer, whichever is shorter, or, in the case
21 17 of a reorganization or merger when each party to the
21 18 reorganization or merger had audited income statements, and a
21 19 pro forma income statement.
21 20 e. Any one of the following requirements is met:
21 21 (1) The issuer of the security has a class of equity
21 22 securities listed on a national securities exchange registered
21 23 under section 6 of the Securities Exchange Act of 1934 or

21 24 designated for trading on the national association of
21 25 securities dealers automated quotation system.

21 26 (2) The issuer of the security is a unit investment trust
21 27 registered under the Investment Company Act of 1940.

21 28 (3) The issuer of the security, including its
21 29 predecessors, has been engaged in continuous business for at
21 30 least three years.

21 31 (4) The issuer of the security has total assets of at
21 32 least two million dollars based on an audited balance sheet as
21 33 of a date within eighteen months before the date of the
21 34 transaction or, in the case of a reorganization or merger when
21 35 the parties to the reorganization or merger each had such an
22 1 audited balance sheet, and a pro forma balance sheet for the
22 2 combined organization.

22 3 3. NONISSUER TRANSACTIONS IN SPECIFIED FOREIGN
22 4 TRANSACTIONS. A nonissuer transaction by or through a broker=
22 5 dealer registered or exempt from registration under this
22 6 chapter in a security of a foreign issuer that is a margin
22 7 security defined in regulations or rules adopted by the board
22 8 of governors of the United States federal reserve system.

22 9 4. NONISSUER TRANSACTIONS IN SECURITIES SUBJECT TO
22 10 SECURITIES EXCHANGE ACT REPORTING. A nonissuer transaction by
22 11 or through a broker=dealer registered or exempt from
22 12 registration under this chapter in an outstanding security if
22 13 the guarantor of the security files reports with the
22 14 securities and exchange commission under the reporting
22 15 requirements of section 13 or 15(d) of the Securities Exchange
22 16 Act of 1934, 15 U.S.C. } 78m or 78o(d).

22 17 5. NONISSUER TRANSACTIONS IN SPECIFIED FIXED INCOME
22 18 SECURITIES. A nonissuer transaction by or through a broker=
22 19 dealer registered or exempt from registration under this
22 20 chapter in a security if any of the following apply:

22 21 a. It is rated at the time of the transaction by a
22 22 nationally recognized statistical rating organization in one
22 23 of its four highest rating categories.

22 24 b. It has a fixed maturity or a fixed interest or
22 25 dividend, if all of the following apply:

22 26 (1) A default has not occurred during the current fiscal
22 27 year or within the three previous fiscal years or during the
22 28 existence of the issuer and any predecessor if less than three
22 29 fiscal years, in the payment of principal, interest, or
22 30 dividends on the security.

22 31 (2) The issuer is engaged in business, is not in the
22 32 organizational stage or in bankruptcy or receivership, and is
22 33 not and has not been within the previous twelve months a blank
22 34 check, blind pool, or shell company that has no specific
22 35 business plan or purpose or has indicated that its primary
23 1 business plan is to engage in a merger or combination of the
23 2 business with, or an acquisition of, an unidentified person.

23 3 6. UNSOLICITED BROKERAGE TRANSACTIONS. A nonissuer
23 4 transaction by or through a broker=dealer registered or exempt
23 5 from registration under this chapter effecting an unsolicited
23 6 order or offer to purchase.

23 7 7. NONISSUER TRANSACTION BY PLEDGEEES. A nonissuer
23 8 transaction executed by a bona fide pledgee without the
23 9 purpose of evading this chapter.

23 10 8. NONISSUER TRANSACTIONS WITH FEDERAL COVERED INVESTMENT
23 11 ADVISERS. A nonissuer transaction by a federal covered
23 12 investment adviser with investments under management in excess
23 13 of one hundred million dollars acting in the exercise of
23 14 discretionary authority in a signed record for the account of
23 15 others.

23 16 9. SPECIFIED EXCHANGE TRANSACTIONS. A transaction in a
23 17 security, whether or not the security or transaction is
23 18 otherwise exempt, in exchange for one or more bona fide
23 19 outstanding securities, claims, or property interests, or
23 20 partly in such exchange and partly for cash, if the terms and
23 21 conditions of the issuance and exchange or the delivery and
23 22 exchange and the fairness of the terms and conditions have
23 23 been approved by the administrator after a hearing.

23 24 10. UNDERWRITER TRANSACTIONS. A transaction between the
23 25 issuer or other person on whose behalf the offering is made
23 26 and an underwriter, or among underwriters.

23 27 11. UNIT SECURED TRANSACTIONS. A transaction in a note,
23 28 bond, debenture, or other evidence of indebtedness secured by
23 29 a mortgage or other security agreement if all of the following
23 30 apply:

23 31 a. The note, bond, debenture, or other evidence of
23 32 indebtedness is offered and sold with the mortgage or other
23 33 security agreement as a unit.

23 34 b. A general solicitation or general advertisement of the

23 35 transaction is not made.

24 1 c. A commission or other remuneration is not paid or
24 2 given, directly or indirectly, to a person not registered
24 3 under this chapter as a broker-dealer or as an agent.

24 4 12. BANKRUPTCY, GUARDIAN, OR CONSERVATOR TRANSACTIONS. A
24 5 transaction by an executor, administrator of an estate,
24 6 sheriff, marshal, receiver, trustee in bankruptcy, guardian,
24 7 or conservator.

24 8 13. TRANSACTIONS WITH SPECIFIED INVESTORS. A sale or
24 9 offer to sell to any of the following:

24 10 a. An institutional investor.
24 11 b. A federal covered investment adviser.
24 12 c. Any other person exempted by rule adopted or order
24 13 issued under this chapter.
24 14 d. A person or class of persons who are granted this
24 15 exemption by the administrator. The administrator, by rule or
24 16 order, may grant this exemption to a person or class of
24 17 persons based upon the factors of financial sophistication,
24 18 net worth, and the amount of assets under investment.

24 19 14. LIMITED OFFERING TRANSACTIONS. A sale or an offer to
24 20 sell securities by or on behalf of an issuer, if the
24 21 transaction is part of a single issue in which all of the
24 22 following apply:

24 23 a. Not more than thirty-five purchasers are present in
24 24 this state during any twelve consecutive months, other than
24 25 those designated in subsection 13.
24 26 b. A general solicitation or general advertising is not
24 27 made in connection with the offer to sell or sale of the
24 28 securities.
24 29 c. A commission or other remuneration is not paid or
24 30 given, directly or indirectly, to a person other than a
24 31 broker-dealer registered under this chapter or an agent
24 32 registered under this chapter for soliciting a prospective
24 33 purchaser in this state.
24 34 d. The issuer reasonably believes that all the purchasers
24 35 in this state, other than those designated in subsection 13,
25 1 are purchasing for investment.

25 2 15. TRANSACTIONS WITH EXISTING SECURITY HOLDERS. A
25 3 transaction under an offer to existing security holders of the
25 4 issuer, including persons that at the date of the transaction
25 5 are holders of convertible securities, options, or warrants,
25 6 if a commission or other remuneration, other than a standby
25 7 commission, is not paid or given, directly or indirectly, for
25 8 soliciting a security holder in this state.

25 9 16. OFFERINGS REGISTERED UNDER THE CHAPTER AND THE
25 10 SECURITIES ACT OF 1933. An offer to sell, but not a sale, of
25 11 a security not exempt from registration under the Securities
25 12 Act of 1933 if all of the following apply:

25 13 a. A registration or offering statement or similar record
25 14 as required under the Securities Act of 1933 has been filed,
25 15 but is not effective, or the offer is made in compliance with
25 16 rule 165 adopted under the Securities Act of 1933, 17 C.F.R.
25 17 } 230.165.
25 18 b. A stop order of which the offeror is aware has not been
25 19 issued against the offeror by the administrator or the
25 20 securities and exchange commission, and an audit, inspection,
25 21 or proceeding that is public and that may culminate in a stop
25 22 order is not known by the offeror to be pending.

25 23 17. OFFERINGS WHEN REGISTRATION HAS BEEN FILED, BUT IS NOT
25 24 EFFECTIVE UNDER THIS CHAPTER AND EXEMPT FROM THE SECURITIES
25 25 ACT OF 1933. An offer to sell, but not a sale, of a security
25 26 exempt from registration under the Securities Act of 1933 if
25 27 all of the following apply:

25 28 a. A registration statement has been filed under this
25 29 chapter, but is not effective.
25 30 b. A solicitation of interest is provided in a record to
25 31 offerees in compliance with a rule adopted by the
25 32 administrator under this chapter.
25 33 c. A stop order of which the offeror is aware has not been
25 34 issued by the administrator under this chapter and an audit,
25 35 inspection, or proceeding that may culminate in a stop order
26 1 is not known by the offeror to be pending.

26 2 18. CONTROL TRANSACTIONS. A transaction involving the
26 3 distribution of the securities of an issuer to the security
26 4 holders of another person in connection with a merger,
26 5 consolidation, exchange of securities, sale of assets, or
26 6 other reorganization to which the issuer, or its parent or
26 7 subsidiary and the other person, or its parent or subsidiary,
26 8 are parties.

26 9 19. RECISION OFFERS. A recision offer, sale, or purchase
26 10 under section 502.510.

26 11 20. OUT-OF-STATE OFFERS OR SALES. An offer or sale of a
26 12 security to a person not a resident of this state and not
26 13 present in this state if the offer or sale does not constitute
26 14 a violation of the laws of the state or foreign jurisdiction
26 15 in which the offeree or purchaser is present and is not part
26 16 of an unlawful plan or scheme to evade this chapter.

26 17 21. EMPLOYEE BENEFIT PLANS. Employees' stock purchase,
26 18 savings, option, profit-sharing, pension, or similar
26 19 employees' benefit plan, including any securities, plan
26 20 interests, and guarantees issued under a compensatory benefit
26 21 plan or compensation contract, contained in a record,
26 22 established by the issuer, its parents, its majority-owned
26 23 subsidiaries, or the majority-owned subsidiaries of the
26 24 issuer's parent for the participation of their employees
26 25 including offers or sales of such securities to any of the
26 26 following:

26 27 a. Directors; general partners; trustees, if the issuer is
26 28 a business trust; officers; consultants; and advisers.

26 29 b. Family members who acquire such securities from those
26 30 persons through gifts or domestic relations orders.

26 31 c. Former employees, directors, general partners,
26 32 trustees, officers, consultants, and advisers if those
26 33 individuals were employed by or providing services to the
26 34 issuer when the securities were offered.

26 35 d. Insurance agents who are exclusive insurance agents of
27 1 the issuer, or the issuer's subsidiaries or parents, or who
27 2 derive more than fifty percent of their annual income from
27 3 those organizations.

27 4 22. SPECIFIED DIVIDENDS AND TENDER OFFERS AND JUDICIALLY
27 5 RECOGNIZED REORGANIZATIONS. A transaction involving any of
27 6 the following:

27 7 a. A stock dividend or equivalent equity distribution,
27 8 whether the corporation or other business organization
27 9 distributing the dividend or equivalent equity distribution is
27 10 the issuer or not, if nothing of value is given by
27 11 stockholders or other equity holders for the dividend or
27 12 equivalent equity distribution other than the surrender of a
27 13 right to a cash or property dividend if each stockholder or
27 14 other equity holder may elect to take the dividend or
27 15 equivalent equity distribution in cash, property, or stock.

27 16 b. An act incident to a judicially approved reorganization
27 17 in which a security is issued in exchange for one or more
27 18 outstanding securities, claims, or property interests, or
27 19 partly in such exchange and partly for cash.

27 20 c. The solicitation of tenders of securities by an offeror
27 21 in a tender offer in compliance with rule 162 adopted under
27 22 the Securities Act of 1933, 17 C.F.R. } 230.162.

27 23 23. NONISSUER TRANSACTIONS INVOLVING SPECIFIED FOREIGN
27 24 ISSUER SECURITIES TRADED ON DESIGNATED SECURITY EXCHANGES. A
27 25 nonissuer transaction in an outstanding security by or through
27 26 a broker-dealer registered or exempt from registration under
27 27 this chapter, if the issuer is a reporting issuer in a foreign
27 28 jurisdiction designated by this subsection or by rule adopted
27 29 or order issued under this chapter; has been subject to
27 30 continuous reporting requirements in the foreign jurisdiction
27 31 for not less than one hundred eighty days before the
27 32 transaction; and the security is listed on the foreign
27 33 jurisdiction's securities exchange that has been designated by
27 34 this subsection or by rule adopted or order issued under this
27 35 chapter, or is a security of the same issuer that is of senior
28 1 or substantially equal rank to the listed security or is a
28 2 warrant or right to purchase or subscribe to any of the
28 3 foregoing. For purposes of this subsection, Canada, together
28 4 with its provinces and territories, is a designated foreign
28 5 jurisdiction and the Toronto stock exchange, inc., is a
28 6 designated securities exchange. After an administrative
28 7 hearing in compliance with chapter 17A, the administrator, by
28 8 rule adopted or order issued under this chapter, may revoke
28 9 the designation of a securities exchange under this
28 10 subsection, if the administrator finds that revocation is
28 11 necessary or appropriate in the public interest and for the
28 12 protection of investors.

28 13 Sec. 7. Section 502.203, Code 2003, is amended by striking
28 14 the section and inserting in lieu thereof the following:

28 15 502.203 ADDITIONAL EXEMPTIONS AND WAIVERS.

28 16 A rule adopted or order issued under this chapter may
28 17 exempt a security, transaction, or offer; a rule under this
28 18 chapter may exempt a class of securities, transactions, or
28 19 offers from any or all of the requirements of sections 502.301
28 20 through 502.306 and 502.504; and an order under this chapter
28 21 may waive, in whole or in part, any or all of the conditions

28 22 for an exemption or offer under sections 502.201 and 502.202.
28 23 Sec. 8. Section 502.204, Code 2003, is amended by striking
28 24 the section and inserting in lieu thereof the following:
28 25 502.204 DENIAL, SUSPENSION, REVOCATION, CONDITION, OR
28 26 LIMITATION OF EXEMPTIONS.
28 27 1. ENFORCEMENT-RELATED POWERS. Except with respect to a
28 28 federal covered security or a transaction involving a federal
28 29 covered security, an order under this chapter may deny,
28 30 suspend application of, condition, limit, or revoke an
28 31 exemption created under section 502.201, subsection 3,
28 32 paragraph "c", or subsection 7 or 8, or section 502.202, or an
28 33 exemption or waiver created under section 502.203 with respect
28 34 to a specific security, transaction, or offer. An order under
28 35 this section may be issued only pursuant to the procedures in
29 1 section 502.306, subsection 4, or section 502.604, and only
29 2 prospectively.
29 3 2. KNOWLEDGE OF ORDER REQUIRED. A person does not violate
29 4 section 502.301, 502.303 through 502.306, 502.504, or 502.510
29 5 by an offer to sell, offer to purchase, sale, or purchase
29 6 effected after the entry of an order issued under this section
29 7 if the person did not know, and in the exercise of reasonable
29 8 care could not have known, of the order.
29 9 ARTICLE 3
29 10 REGISTRATION OF SECURITIES AND NOTICE FILING OF
29 11 FEDERAL COVERED SECURITIES
29 12 Sec. 9. Section 502.301, Code 2003, is amended by striking
29 13 the section and inserting in lieu thereof the following:
29 14 502.301 SECURITIES REGISTRATION REQUIREMENT.
29 15 It is unlawful for a person to offer or sell a security in
29 16 this state unless one of the following applies:
29 17 1. The security is a federal covered security.
29 18 2. The security, transaction, or offer is exempted from
29 19 registration under sections 502.201 through 502.203.
29 20 3. The security is registered under this chapter.
29 21 Sec. 10. Section 502.302, Code 2003, is amended by
29 22 striking the section and inserting in lieu thereof the
29 23 following:
29 24 502.302 NOTICE FILING.
29 25 1. REQUIRED FILING OF RECORDS. With respect to a federal
29 26 covered security, as defined in section 18(b)(2) of the
29 27 Securities Act of 1933, 15 U.S.C. } 77r(b)(2), that is not
29 28 otherwise exempt under sections 502.201 through 502.203, a
29 29 rule adopted or order issued under this chapter may require
29 30 the filing of any or all of the following records:
29 31 a. Before the initial offer of a federal covered security
29 32 in this state, all records that are part of a federal
29 33 registration statement filed with the securities and exchange
29 34 commission under the Securities Act of 1933 and a consent to
29 35 service of process complying with section 502.611 signed by
30 1 the issuer.
30 2 A person who is the issuer of a federal covered security
30 3 under section 18(b)(2) of the Securities Act of 1933 shall
30 4 initially make a notice filing and annually renew a notice
30 5 filing in this state for an indefinite amount or a fixed
30 6 amount. The fixed amount must be for two hundred fifty
30 7 thousand dollars. A notice filer shall pay a filing fee when
30 8 the notice is filed. If the amount covered by the notice is
30 9 indefinite, the notice filer shall pay a filing fee of one
30 10 thousand dollars. If the amount covered by the notice is
30 11 fixed, the notice filer shall pay a filing fee of two hundred
30 12 fifty dollars, and all of the following shall apply:
30 13 (1) The notice filer shall file a sales report with the
30 14 administrator or pay an additional filing fee of one thousand
30 15 two hundred fifty dollars within ninety days after the notice
30 16 filing's annual renewal date. If the notice filer files a
30 17 sales report with the administrator, the notice filer shall
30 18 pay an additional filing fee of one-tenth of one percent of
30 19 the amount of securities sold in excess of two hundred fifty
30 20 thousand dollars. The additional filing fee must be paid
30 21 within ninety days after the notice filing's annual renewal
30 22 date.
30 23 (2) The notice filing covering the additional securities
30 24 shall be effective retroactively as of the effective date of
30 25 the notice filing that is being amended.
30 26 b. After the initial offer of the federal covered security
30 27 in this state, all records that are part of an amendment to a
30 28 federal registration statement filed with the securities and
30 29 exchange commission under the Securities Act of 1933.
30 30 2. NOTICE FILING EFFECTIVENESS AND RENEWAL. A notice
30 31 filing under subsection 1 is effective for one year commencing
30 32 on the later of the notice filing or the effectiveness of the

30 33 offering filed with the securities and exchange commission.
30 34 On or before expiration, the issuer may renew a notice filing
30 35 by filing a copy of those records filed by the issuer with the
31 1 securities and exchange commission that are required by rule
31 2 or order under this chapter to be filed and by paying the
31 3 renewal fee required by subsection 1, paragraph "a". A
31 4 previously filed consent to service of process complying with
31 5 section 502.611 may be incorporated by reference in a renewal.
31 6 A renewed notice filing becomes effective upon the expiration
31 7 of the filing being renewed.

31 8 3. NOTICE FILINGS FOR FEDERAL COVERED SECURITIES UNDER
31 9 SECTION 18(b)(4)(D). With respect to a security that is a
31 10 federal covered security under section 18(b)(4)(D) of the
31 11 Securities Act of 1933, 15 U.S.C. } 77r(b)(4)(D), a rule under
31 12 this chapter may require a notice filing by or on behalf of an
31 13 issuer to include a copy of form D, including the appendix, as
31 14 promulgated by the securities and exchange commission, and a
31 15 consent to service of process complying with section 502.611
31 16 signed by the issuer not later than fifteen days after the
31 17 first sale of the federal covered security in this state and
31 18 the payment of a fee of one hundred dollars; and the payment
31 19 of a fee of two hundred fifty dollars for any late filing.

31 20 4. STOP ORDERS. Except with respect to a federal security
31 21 under section 18(b)(1) of the Securities Act of 1933, 15
31 22 U.S.C. } 77r(b)(1), if the administrator finds that there is a
31 23 failure to comply with a notice or fee requirement of this
31 24 section, the administrator may issue a stop order suspending
31 25 the offer and sale of a federal covered security in this
31 26 state. If the deficiency is corrected, the stop order is void
31 27 as of the time of its issuance and no penalty may be imposed
31 28 by the administrator.

31 29 Sec. 11. Section 502.303, Code 2003, is amended by
31 30 striking the section and inserting in lieu thereof the
31 31 following:

31 32 502.303 SECURITIES REGISTRATION BY COORDINATION.
31 33 1. REGISTRATION PERMITTED.
31 34 a. A security for which a registration statement has been
31 35 filed under the Securities Act of 1933 in connection with the
32 1 same offering may be registered by coordination under this
32 2 section.
32 3 b. A proposed sale pursuant to the exemption contained in
32 4 "Regulation A" as adopted under section 3(b) of the Securities
32 5 Act of 1933 where such registration statement has not become
32 6 effective or notification of proposed sale has not been
32 7 qualified may be registered by coordination under this
32 8 section.

32 9 2. REQUIRED RECORDS. A registration statement and
32 10 accompanying records under this section must contain or be
32 11 accompanied by all of the following records in addition to the
32 12 information specified in section 502.305 and a consent to
32 13 service of process complying with section 502.611:
32 14 a. A copy of the latest form of prospectus filed under the
32 15 Securities Act of 1933.
32 16 b. A copy of the articles of incorporation and bylaws or
32 17 their substantial equivalents currently in effect; a copy of
32 18 any agreement with or among underwriters; a copy of any
32 19 indenture or other instrument governing the issuance of the
32 20 security to be registered; and a specimen, copy, or
32 21 description of the security that is required by rule adopted
32 22 or order issued under this chapter.
32 23 c. Copies of any other information or any other records
32 24 filed by the issuer under the Securities Act of 1933 requested
32 25 by the administrator.
32 26 d. An undertaking to forward each amendment to the federal
32 27 prospectus, other than an amendment that delays the effective
32 28 date of the registration statement, promptly after it is filed
32 29 with the securities and exchange commission.

32 30 3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION STATEMENT.
32 31 A registration statement under this section becomes effective
32 32 simultaneously with or subsequent to the federal registration
32 33 statement when all the following conditions are satisfied:
32 34 a. A stop order under subsection 4 or section 502.306 or
32 35 issued by the securities and exchange commission is not in
33 1 effect and a proceeding is not pending against the issuer
33 2 under section 502.306.
33 3 b. The registration statement has been on file for at
33 4 least twenty days or a shorter period provided by rule adopted
33 5 or order issued under this chapter.

33 6 4. NOTICE OF FEDERAL REGISTRATION STATEMENT EFFECTIVENESS.
33 7 The registrant shall promptly notify the administrator in a
33 8 record of the date when the federal registration statement

33 9 becomes effective and the content of any price amendment and
33 10 shall promptly file a record containing the price amendment.
33 11 If the notice is not timely received, the administrator may
33 12 issue a stop order, without prior notice or hearing,
33 13 retroactively denying effectiveness to the registration
33 14 statement or suspending its effectiveness until in compliance
33 15 with this section. The administrator shall promptly notify
33 16 the registrant of an order by telegram, telephone, or
33 17 electronic means and promptly confirm this notice by a record.
33 18 If the registrant subsequently complies with the notice
33 19 requirements of this section, the stop order is void as of the
33 20 date of its issuance.

33 21 5. EFFECTIVENESS OF REGISTRATION STATEMENT. If the
33 22 federal registration statement becomes effective before each
33 23 of the conditions in this section is satisfied or is waived by
33 24 the administrator, the registration statement is automatically
33 25 effective under this chapter when all the conditions are
33 26 satisfied or waived. If the registrant notifies the
33 27 administrator of the date when the federal registration
33 28 statement is expected to become effective, the administrator
33 29 shall promptly notify the registrant by telegram, telephone,
33 30 or electronic means and promptly confirm this notice by a
33 31 record, indicating whether all the conditions are satisfied or
33 32 waived and whether the administrator intends the institution
33 33 of a proceeding under section 502.306. The notice by the
33 34 administrator does not preclude the institution of such a
33 35 proceeding.

34 1 Sec. 12. Section 502.304, Code 2003, is amended by
34 2 striking the section and inserting in lieu thereof the
34 3 following:

34 4 502.304 SECURITIES REGISTRATION BY QUALIFICATION.

34 5 1. REGISTRATION PERMITTED. A security may be registered
34 6 by qualification under this section.

34 7 2. REQUIRED RECORDS. A registration statement under this
34 8 section must contain the information or records specified in
34 9 section 502.305, a consent to service of process complying
34 10 with section 502.611, and, if required by rule adopted under
34 11 this chapter, all of the following information or records:

34 12 a. With respect to the issuer and any significant
34 13 subsidiary, its name, address, and form of organization; the
34 14 state or foreign jurisdiction and date of its organization;
34 15 the general character and location of its business; a
34 16 description of its physical properties and equipment; and a
34 17 statement of the general competitive conditions in the
34 18 industry or business in which it is or will be engaged.

34 19 b. With respect to each director and officer of the
34 20 issuer, and other person having a similar status or performing
34 21 similar functions, the person's name, address, and principal
34 22 occupation for the previous five years; the amount of
34 23 securities of the issuer held by the person as of the
34 24 thirtieth day before the filing of the registration statement;
34 25 the amount of the securities covered by the registration
34 26 statement to which the person has indicated an intention to
34 27 subscribe; and a description of any material interest of the
34 28 person in any material transaction with the issuer or a
34 29 significant subsidiary effected within the previous three
34 30 years or proposed to be effected.

34 31 c. With respect to persons covered by paragraph "b", the
34 32 aggregate sum of the remuneration paid to those persons during
34 33 the previous twelve months and estimated to be paid during the
34 34 next twelve months, directly or indirectly, by the issuer, and
34 35 all predecessors, parents, subsidiaries, and affiliates of the
35 1 issuer.

35 2 d. With respect to a person owning of record or owning
35 3 beneficially, if known, ten percent or more of the outstanding
35 4 shares of any class of equity security of the issuer, the
35 5 information specified in paragraph "b" other than the person's
35 6 occupation.

35 7 e. With respect to a promoter, if the issuer was organized
35 8 within the previous three years, the information or records
35 9 specified in paragraph "b", any amount paid to the promoter
35 10 within that period or intended to be paid to the promoter, and
35 11 the consideration for the payment.

35 12 f. With respect to a person on whose behalf any part of
35 13 the offering is to be made in a nonissuer distribution, the
35 14 person's name and address; the amount of securities of the
35 15 issuer held by the person as of the date of the filing of the
35 16 registration statement; a description of any material interest
35 17 of the person in any material transaction with the issuer or
35 18 any significant subsidiary effected within the previous three
35 19 years or proposed to be effected; and a statement of the

35 20 reasons for making the offering.

35 21 g. The capitalization and long-term debt, on both a
35 22 current and pro forma basis, of the issuer and any significant
35 23 subsidiary, including a description of each security
35 24 outstanding or being registered or otherwise offered, and a
35 25 statement of the amount and kind of consideration, whether in
35 26 the form of cash, physical assets, services, patents,
35 27 goodwill, or anything else of value, for which the issuer or
35 28 any subsidiary has issued its securities within the previous
35 29 two years or is obligated to issue its securities.

35 30 h. The kind and amount of securities to be offered; the
35 31 proposed offering price or the method by which it is to be
35 32 computed; any variation at which a proportion of the offering
35 33 is to be made to a person or class of persons other than the
35 34 underwriters, with a specification of the person or class; the
35 35 basis on which the offering is to be made if otherwise than
36 1 for cash; the estimated aggregate underwriting and selling
36 2 discounts or commissions and finders' fees, including
36 3 separately cash, securities, contracts, or anything else of
36 4 value to accrue to the underwriters or finders in connection
36 5 with the offering or, if the selling discounts or commissions
36 6 are variable, the basis of determining them and their maximum
36 7 and minimum amounts; the estimated amounts of other selling
36 8 expenses, including legal, engineering, and accounting
36 9 charges; the name and address of each underwriter and each
36 10 recipient of a finder's fee; a copy of any underwriting or
36 11 selling group agreement under which the distribution is to be
36 12 made or the proposed form of any such agreement whose terms
36 13 have not yet been determined; and a description of the plan of
36 14 distribution of any securities that are to be offered
36 15 otherwise than through an underwriter.

36 16 i. The estimated monetary proceeds to be received by the
36 17 issuer from the offering; the purposes for which the proceeds
36 18 are to be used by the issuer; the estimated amount to be used
36 19 for each purpose; the order or priority in which the proceeds
36 20 will be used for the purposes stated; the amounts of any funds
36 21 to be raised from other sources to achieve the purposes
36 22 stated; the sources of the funds; and, if a part of the
36 23 proceeds is to be used to acquire property, including
36 24 goodwill, otherwise than in the ordinary course of business,
36 25 the names and addresses of the vendors, the purchase price,
36 26 the names of any persons that have received commissions in
36 27 connection with the acquisition, and the amounts of the
36 28 commissions and other expenses in connection with the
36 29 acquisition, including the cost of borrowing money to finance
36 30 the acquisition.

36 31 j. A description of any stock options or other security
36 32 options outstanding, or to be created in connection with the
36 33 offering, and the amount of those options held or to be held
36 34 by each person required to be named in paragraph "b", "d",
36 35 "e", "f", or "h" and by any person that holds or will hold ten
37 1 percent or more in the aggregate of those options.

37 2 k. The dates of, parties to, and general effect concisely
37 3 stated of each managerial or other material contract made or
37 4 to be made otherwise than in the ordinary course of business
37 5 to be performed in whole or in part at or after the filing of
37 6 the registration statement or that was made within the
37 7 previous two years, and a copy of the contract.

37 8 l. A description of any pending litigation, action, or
37 9 proceeding to which the issuer is a party and that materially
37 10 affects its business or assets, and any litigation, action, or
37 11 proceeding known to be contemplated by governmental
37 12 authorities.

37 13 m. A copy of any prospectus, pamphlet, circular, form
37 14 letter, advertisement, or other sales literature intended as
37 15 of the effective date to be used in connection with the
37 16 offering and any solicitation of interest used in compliance
37 17 with section 502.202, subsection 17, paragraph "b".

37 18 n. A specimen or copy of the security being registered,
37 19 unless the security is uncertificated; a copy of the issuer's
37 20 articles of incorporation and bylaws or their substantial
37 21 equivalents, in effect; and a copy of any indenture or other
37 22 instrument covering the security to be registered.

37 23 o. A signed or conformed copy of an opinion of counsel
37 24 concerning the legality of the security being registered, with
37 25 an English translation if it is in a language other than
37 26 English, which states whether the security when sold will be
37 27 validly issued, fully paid, and nonassessable and, if a debt
37 28 security, a binding obligation of the issuer.

37 29 p. A signed or conformed copy of a consent of any
37 30 accountant, engineer, appraiser, or other person whose

37 31 profession gives authority for a statement made by the person,
37 32 if the person is named as having prepared or certified a
37 33 report or valuation, other than an official record, that is
37 34 public, which is used in connection with the registration
37 35 statement.

38 1 q. A balance sheet of the issuer as of a date within four
38 2 months before the filing of the registration statement; a
38 3 statement of income and a statement of cash flows for each of
38 4 the three fiscal years preceding the date of the balance sheet
38 5 and for any period between the close of the immediately
38 6 previous fiscal year and the date of the balance sheet, or for
38 7 the period of the issuer's and any predecessor's existence if
38 8 less than three years; and, if any part of the proceeds of the
38 9 offering is to be applied to the purchase of a business, the
38 10 financial statements that would be required if that business
38 11 were the registrant.

38 12 r. Any additional information or records required by rule
38 13 adopted or order issued under this chapter.

38 14 2A. REPORTS AND EXAMINATIONS. The administrator may by
38 15 rule or order require as a condition of registration by
38 16 qualification, and at the expense of the applicant or
38 17 registrant, that a report by an accountant, engineer,
38 18 appraiser, or other professional person be filed. The
38 19 administrator may also designate one or more employees of the
38 20 securities bureau to make an examination of the business and
38 21 records of an issuer of securities for which a registration
38 22 statement has been filed by qualification, at the expense of
38 23 the applicant or registrant.

38 24 3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION STATEMENT.
38 25 A registration statement under this section becomes effective
38 26 thirty days, or any shorter period provided by rule adopted or
38 27 order issued under this chapter, after the date the
38 28 registration statement or the last amendment other than a
38 29 price amendment is filed, if any of the following applies:

38 30 a. A stop order is not in effect and a proceeding is not
38 31 pending under section 502.306.

38 32 b. The administrator has not issued an order under section
38 33 502.306 delaying effectiveness.

38 34 c. The applicant or registrant has not requested that
38 35 effectiveness be delayed.

39 1 4. DELAY OF EFFECTIVENESS OF REGISTRATION STATEMENT. The
39 2 administrator may delay effectiveness once for not more than
39 3 ninety days if the administrator determines the registration
39 4 statement is not complete in all material respects and
39 5 promptly notifies the applicant or registrant of that
39 6 determination. The administrator may also delay effectiveness
39 7 for a further period of not more than thirty days if the
39 8 administrator determines that the delay is necessary or
39 9 appropriate.

39 10 5. PROSPECTUS DISTRIBUTION MAY BE REQUIRED. A rule
39 11 adopted or order issued under this chapter may require as a
39 12 condition of registration under this section that a prospectus
39 13 containing a specified part of the information or record
39 14 specified in subsection 2 be sent or given to each person to
39 15 whom an offer is made, before or concurrently, with the
39 16 earliest of any of the following:

39 17 a. The first offer made in a record to the person
39 18 otherwise than by means of a public advertisement, by or for
39 19 the account of the issuer or another person on whose behalf
39 20 the offering is being made or by an underwriter or broker=
39 21 dealer that is offering part of an unsold allotment or
39 22 subscription taken by the person as a participant in the
39 23 distribution.

39 24 b. The confirmation of a sale made by or for the account
39 25 of the person.

39 26 c. Payment pursuant to such a sale.

39 27 d. Delivery of the security pursuant to such a sale.

39 28 Sec. 13. NEW SECTION. 502.304A EXPEDITED REGISTRATION BY
39 29 FILING FOR SMALL ISSUERS.

39 30 1. REGISTRATION PERMITTED. A security meeting the
39 31 conditions set forth in this section may be registered by
39 32 filing as provided in this section.

39 33 2. CONDITIONS OF THE ISSUER. In order to register under
39 34 this section, the issuer must meet all of the following
39 35 conditions:

40 1 a. The issuer must be a corporation, limited liability
40 2 company, or partnership organized under the laws of one of the
40 3 states or possessions of the United States which engages in or
40 4 proposes to engage in a business other than petroleum
40 5 exploration or production mining or other extractive
40 6 industries.

40 7 b. The securities must be offered and sold only on behalf
40 8 of the issuer, and must not be used by any selling security
40 9 holder to register securities for resale.

40 10 3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION ==
40 11 REQUIRED RECORDS AND FEE. In order to register under this
40 12 section, all of the following conditions must be satisfied:

40 13 a. The offering price for common stock, the exercise price
40 14 if the securities are options, warrants, or rights for common
40 15 stock, or the conversion price if the securities are
40 16 convertible into common stock must be equal to or greater than
40 17 one dollar per share. The issuer must not split its common
40 18 stock, or declare a stock dividend, for two years after
40 19 effectiveness of the registration, except that in connection
40 20 with a subsequent registered public offering, the issuer may
40 21 upon application and consent of the administrator take such
40 22 action.

40 23 b. A commission, fee, or other remuneration shall not be
40 24 paid or given, directly or indirectly, for the sale of the
40 25 securities, except for a payment to a broker=dealer or agent
40 26 registered under this chapter, or except for a payment as
40 27 permitted by the administrator by rule or by order issued upon
40 28 written application showing good cause for allowance of a
40 29 commission, fee, or other remuneration.

40 30 c. The issuer or a broker=dealer offering or selling the
40 31 securities is not or would not be disqualified under rule 505,
40 32 17 C.F.R. } 230.505(2)(iii), adopted under the Securities Act
40 33 of 1933.

40 34 d. The aggregate offering price of the offering of
40 35 securities by the issuer within or outside this state must not
41 1 exceed one million dollars, less the aggregate offering price
41 2 for all securities sold within twelve months before the start
41 3 of, and during the offering of, the securities under rule 504,
41 4 17 C.F.R. } 230.504, in reliance on any exemption under
41 5 section 3(b) of the Securities Act of 1933 or in violation of
41 6 section 5(a) of that Act; provided, that if rule 504, 17
41 7 C.F.R. } 230.504, adopted under the Securities Act of 1933, is
41 8 amended, that the administrator may by rule increase the limit
41 9 under this paragraph to conform to amendments to federal law,
41 10 including but not limited to modification in the amount of the
41 11 aggregate offering price.

41 12 e. An offering document meeting the disclosure
41 13 requirements of rule 502(b)(2), 17 C.F.R. } 230.502(b)(2),
41 14 adopted under the Securities Act of 1933, must be delivered to
41 15 each purchaser in the state prior to the sale of the
41 16 securities, unless the administrator by rule or order provides
41 17 for disclosure different from that rule.

41 18 f. The issuer must file with the administrator an
41 19 application for registration and the offering document to be
41 20 used in connection with the offer and sale of securities.

41 21 g. The issuer must pay to the administrator a fee of one
41 22 hundred dollars and is not required to pay the filing fee set
41 23 forth in section 502.305, subsection 2.

41 24 4. EFFECTIVENESS OF REGISTRATION. Unless the
41 25 administrator issues a stop order denying the effectiveness of
41 26 the registration, as provided in section 502.306, the
41 27 registration becomes effective on the fifth business day after
41 28 the registration has been filed with the administrator, or
41 29 earlier if the administrator permits a shorter time period
41 30 between registration and effectiveness.

41 31 5. AGENT REGISTRATION. In connection with an offering
41 32 registered under this section, a person may be registered as
41 33 an agent of the issuer under section 502.402 by the filing of
41 34 an application by the issuer with the administrator for the
41 35 registration of the person as an agent of the issuer and the
42 1 paying of a fee of ten dollars. Notwithstanding any other
42 2 provision of this chapter, the registration of the agent shall
42 3 be effective until withdrawn by the issuer or until the
42 4 securities registered pursuant to the registration statement
42 5 have all been sold, whichever occurs first. The registration
42 6 of an agent shall become effective when ordered by the
42 7 administrator or on the fifth business day after the agent's
42 8 application has been filed with the administrator, whichever
42 9 occurs first, and the administrator shall not impose further
42 10 conditions upon the registration of the agent. However, the
42 11 administrator may deny, revoke, suspend, or withdraw the
42 12 registration of the agent at any time as provided in section
42 13 502.412. An agent registered solely pursuant to this section
42 14 is entitled to sell only securities registered under this
42 15 section.

42 16 6. INAPPLICABLE ISSUERS. This section is not applicable
42 17 to any of the following issuers:

42 18 a. An investment company, including a mutual fund.
42 19 b. An issuer subject to the reporting requirements of
42 20 section 13 or 15(d) of the Securities Exchange Act of 1934.
42 21 c. A direct participation program, unless otherwise
42 22 permitted by the administrator by rule or order for good
42 23 cause.
42 24 d. A blind pool or other offering for which the specific
42 25 business or properties cannot now be described, unless the
42 26 administrator determines that the blind pool is a community
42 27 development, seed, or venture capital fund for which the
42 28 administrator permits a waiver.

42 29 7. LIMITS ON STOP ORDERS. Notwithstanding any other
42 30 provision of this chapter, the administrator shall not deny
42 31 effectiveness to or suspend or revoke the effectiveness of a
42 32 registration under this section on the basis of section
42 33 502.306, subsection 1, paragraph "h".

42 34 Sec. 14. Section 502.305, Code 2003, is amended by
42 35 striking the section and inserting in lieu thereof the
43 1 following:

43 2 502.305 SECURITIES REGISTRATION FILINGS.

43 3 1. WHO MAY FILE. A registration statement may be filed by
43 4 the issuer, a person on whose behalf the offering is to be
43 5 made, or a broker-dealer registered under this chapter.

43 6 2. FILING. Except as provided in subsection 10 and
43 7 section 502.304A, subsection 3, paragraph "g", a person who
43 8 files a registration statement or a notice filing shall pay a
43 9 filing fee of one-tenth of one percent of the proposed
43 10 aggregate sales price of the securities to be offered to
43 11 persons in this state pursuant to the registration statement
43 12 or notice filing. However, except as provided in subsection
43 13 10, section 502.302, subsection 1, paragraph "a", and section
43 14 502.304A, subsection 3, paragraph "g", the annual filing fee
43 15 shall not be less than fifty dollars or more than one thousand
43 16 dollars. The administrator shall retain the filing fee even
43 17 if the notice filing is withdrawn or the registration is
43 18 withdrawn, denied, suspended, revoked, or abandoned.

43 19 3. STATUS OF OFFERING. A registration statement filed
43 20 under section 502.303 or 502.304 must specify all of the
43 21 following:

43 22 a. The amount of securities to be offered in this state.
43 23 b. The states in which a registration statement or similar
43 24 record in connection with the offering has been or is to be
43 25 filed.
43 26 c. Any adverse order, judgment, or decree issued in
43 27 connection with the offering by a state securities regulator,
43 28 the securities and exchange commission, or a court.

43 29 4. INCORPORATION BY REFERENCE. A record filed under this
43 30 chapter or its predecessor chapter within five years preceding
43 31 the filing of a registration statement may be incorporated by
43 32 reference in the registration statement to the extent that the
43 33 record is currently accurate.

43 34 5. NONISSUER DISTRIBUTION. In the case of a nonissuer
43 35 distribution, information or a record shall not be required
44 1 under subsection 9 or section 502.304, unless it is known to
44 2 the person filing the registration statement or to the person
44 3 on whose behalf the distribution is to be made or unless it
44 4 can be furnished by those persons without unreasonable effort
44 5 or expense.

44 6 6. ESCROW AND IMPOUNDMENT. A rule adopted or order issued
44 7 under this chapter may require as a condition of registration
44 8 that a security issued within the previous five years or to be
44 9 issued to a promoter for a consideration substantially less
44 10 than the public offering price or to a person for a
44 11 consideration other than cash be deposited in escrow; and that
44 12 the proceeds from the sale of the registered security in this
44 13 state be impounded until the issuer receives a specified
44 14 amount from the sale of the security either in this state or
44 15 elsewhere. The conditions of any escrow or impoundment
44 16 required under this subsection may be established by rule
44 17 adopted or order issued under this chapter, but the
44 18 administrator shall not reject a depository institution solely
44 19 because of its location in another state.

44 20 7. FORM OF SUBSCRIPTION. A rule adopted or order issued
44 21 under this chapter may require as a condition of registration
44 22 that a security registered under this chapter be sold only on
44 23 a specified form of subscription or sale contract and that a
44 24 signed or conformed copy of each contract be filed under this
44 25 chapter or preserved for a period specified by the rule or
44 26 order, which shall not be longer than five years.

44 27 8. EFFECTIVE PERIOD. Except while a stop order is in
44 28 effect under section 502.306, a registration statement is

effective for one year after its effective date, or for any longer period designated in an order issued under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement shall not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

9. PERIODIC REPORTS. While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

10. POSTEFFECTIVE AMENDMENTS. A registrant who sold securities to persons in this state in excess of the amount of securities registered in this state at the time of the sale may file an amendment to its registration statement to register the additional securities. All of the following requirements shall apply:

a. If a registrant proposes to sell securities to persons in this state pursuant to a registration statement that is currently effective in this state in an amount that exceeds the amount registered in this state, the registrant must do all of the following:

(1) File an amendment to register the additional securities.

(2) Pay an additional filing fee in the same amount as specified by subsection 2 as though the amendment constitutes a separate issue.

b. If a registrant sold securities to persons in this state in excess of the amount registered in this state at that time, the registrant must do all of the following:

(1) File an amendment to register the additional securities.

(2) Pay an additional filing fee that is three times the amount specified in subsection 2 as though the amendment constitutes a separate issue.

The administrator may order the amendment effective retroactively as of the effective date of the registration statement that is being amended.

Sec. 15. NEW SECTION. 502.306 DENIAL, SUSPENSION, AND REVOCATION OF SECURITIES REGISTRATION.

1. STOP ORDERS. The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that any of the following apply:

a. The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 502.305, subsection 10, as of its effective date, or a report under section 502.305, subsection 9, is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact.

b. This chapter or a rule adopted or order issued under this chapter or a condition imposed under this chapter has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter.

c. The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering, but the administrator shall not institute a proceeding against an

47 5 effective registration statement under this paragraph more
47 6 than one year after the date of the order or injunction on
47 7 which it is based, and the administrator shall not issue an
47 8 order under this paragraph on the basis of an order or
47 9 injunction issued under the securities act of another state
47 10 unless the order or injunction was based on conduct that would
47 11 constitute, as of the date of the order, a ground for a stop
47 12 order under this section.

47 13 d. The issuer's enterprise or method of business includes
47 14 or would include activities that are unlawful where performed.

47 15 e. With respect to a security sought to be registered
47 16 under section 502.303, there has been a failure to comply with
47 17 the undertaking required by section 502.303, subsection 2,
47 18 paragraph "d".

47 19 f. The applicant or registrant has not paid the filing
47 20 fee, but the administrator shall void the order if the
47 21 deficiency is corrected.

47 22 g. The offering is subject to any of the following:

47 23 (1) Will work or tend to work a fraud upon purchasers or
47 24 would so operate.

47 25 (2) Has been or would be made with unreasonable amounts of
47 26 underwriters' and sellers' discounts, commissions, or other
47 27 compensation, or promoters' profits or participations, or
47 28 unreasonable amounts or kinds of options.

47 29 h. The financial condition of the issuer affects or would
47 30 affect the soundness of the securities, except that
47 31 applications for registration of securities by companies which
47 32 are in the development stage shall not be denied based solely
47 33 upon the financial condition of the company. For purposes of
47 34 this rule, a "development stage company" is defined as a
47 35 company which has been in existence for five years or less.

48 1 i. A person who is an issuer, correspondent, or applicant,
48 2 as listed on the uniform application to register securities
48 3 form known as "Form U-1", has abandoned the registration
48 4 statement. The administrator may enter an order pursuant to
48 5 this paragraph if a notice of abandonment is sent to the last
48 6 known address of each person, and the person fails to take
48 7 corrective action within the time specified by the
48 8 administrator. The notice of abandonment shall state the
48 9 reasons for the administrator's action, specify the corrective
48 10 action required, and specify the time period for submitting a
48 11 response. However, the time specified shall not be less than
48 12 fifteen days.

48 13 2. ENFORCEMENT OF SUBSECTION 1, PARAGRAPH "G". To the
48 14 extent practicable, the administrator by rule adopted or order
48 15 issued under this chapter shall publish standards that provide
48 16 notice of conduct that violates subsection 1, paragraph "g".

48 17 3. INSTITUTION OF STOP ORDER. The administrator shall not
48 18 institute a stop order proceeding against an effective
48 19 registration statement on the basis of conduct or a
48 20 transaction known to the administrator when the registration
48 21 statement became effective unless the proceeding is instituted
48 22 within thirty days after the registration statement became
48 23 effective.

48 24 4. SUMMARY PROCESS. The administrator may summarily
48 25 revoke, deny, postpone, or suspend the effectiveness of a
48 26 registration statement pending final determination of an
48 27 administrative proceeding. Upon the issuance of the order,
48 28 the administrator shall promptly notify each person specified
48 29 in subsection 5 that the order has been issued, the reasons
48 30 for the revocation, denial, postponement, or suspension, and
48 31 that within fifteen days after the receipt of a request in a
48 32 record from the person the matter will be scheduled for a
48 33 hearing. If a hearing is not requested and none is ordered by
48 34 the administrator, within thirty days after the date of
48 35 service of the order, the order becomes final. If a hearing
49 1 is requested or ordered, the administrator, after notice of
49 2 and opportunity for hearing for each person subject to the
49 3 order, may modify or vacate the order or extend the order
49 4 until final determination.

49 5 5. PROCEDURAL REQUIREMENTS FOR STOP ORDER. A stop order
49 6 shall not be issued under this section without all of the
49 7 following:

49 8 a. An appropriate notice to the applicant or registrant,
49 9 the issuer, and the person on whose behalf the securities are
49 10 to be or have been offered.

49 11 b. An opportunity for hearing.

49 12 c. Findings of fact and conclusions of law in a record in
49 13 accordance with chapter 17A.

49 14 6. MODIFICATION OR VACATION OF STOP ORDER. The
49 15 administrator may modify or vacate a stop order issued under

49 16 this section if the administrator finds that the conditions
49 17 that caused its issuance have changed or that it is necessary
49 18 or appropriate in the public interest or for the protection of
49 19 investors.

49 20 Sec. 16. NEW SECTION. 502.307 WAIVER AND MODIFICATION.

49 21 The administrator may waive or modify, in whole or in part,
49 22 any or all of the requirements of sections 502.302, 502.303,
49 23 and 502.304, subsection 2, or the requirement of any
49 24 information or record in a registration statement or in a
49 25 periodic report filed pursuant to section 502.305, subsection
49 26 9.

49 27 ARTICLE 3A

49 28 TAKEOVER PROVISIONS

49 29 Sec. 17. NEW SECTION. 502.321A SPECIAL DEFINITIONS.

49 30 For the purposes of this article, unless the context
49 31 otherwise requires:

49 32 1. "Associate" means a person acting jointly or in concert
49 33 with another for the purpose of acquiring, holding or
49 34 disposing of, or exercising any voting rights attached to the
49 35 equity securities of a target company.

50 1 2. "Beneficial owner" includes, but is not limited to, any
50 2 person who directly or indirectly, through any contract,
50 3 arrangement, understanding, or relationship, has or shares the
50 4 power to vote or direct the voting of a security or has or
50 5 shares the power to dispose of or otherwise direct the
50 6 disposition of the security. A person is the beneficial owner
50 7 of securities beneficially owned by any relative or spouse or
50 8 relative of the spouse residing in the home of the person, any
50 9 trust or estate in which the person owns ten percent or more
50 10 of the total beneficial interest or serves as trustee or
50 11 executor, any corporation or entity in which the person owns
50 12 ten percent or more of the equity, and any affiliate or
50 13 associate of the person.

50 14 3. "Beneficial ownership" includes, but is not limited to,
50 15 the right, exercisable within sixty days, to acquire
50 16 securities through the exercise of options, warrants, or
50 17 rights or the conversion of convertible securities. The
50 18 securities subject to these options, warrants, rights, or
50 19 conversion privileges held by a person are outstanding for the
50 20 purpose of computing the percentage of outstanding securities
50 21 of the class owned by the person, but are not outstanding for
50 22 the purpose of computing the percentage of the class owned by
50 23 any other person.

50 24 4. "Equity security" means any stock or similar security
50 25 and includes any of the following:

50 26 a. Any security convertible, with or without
50 27 consideration, into a stock or similar security.

50 28 b. Any warrant or right to subscribe to or purchase a
50 29 stock or similar security.

50 30 c. Any security carrying a warrant or right to subscribe
50 31 to or purchase a stock or similar security.

50 32 d. Any other security which the administrator deems to be
50 33 of a similar nature and considers necessary or appropriate,
50 34 according to rules prescribed by the administrator for the
50 35 public interest and protection of investors, to be treated as
51 1 an equity security.

51 2 5. "Offeree" means the beneficial owner, who is a resident
51 3 of this state, of equity securities which an offeror offers to
51 4 acquire in connection with a takeover offer.

51 5 6. "Offeror" means a person who makes or in any manner
51 6 participates in making a takeover offer. It does not include
51 7 a supervised financial institution or broker-dealer loaning
51 8 funds to an offeror in the ordinary course of its business, or
51 9 any supervised financial institution, broker-dealer, attorney,
51 10 accountant, consultant, employee, or other person furnishing
51 11 information or advice to or performing ministerial duties for
51 12 an offeror, and who does not otherwise participate in the
51 13 takeover offer.

51 14 7. "Principal place of business" means the executive
51 15 office of a target company from which the officers, partners,
51 16 or managers of the target company direct, control, and
51 17 coordinate the activities of the target company.

51 18 8. a. "Takeover offer" means the offer to acquire any
51 19 equity securities of a target company from a resident of this
51 20 state pursuant to a tender offer or request or invitation for
51 21 tenders, if after the acquisition of all securities acquired
51 22 pursuant to the offer any of the following are true:

51 23 (1) The offeror would be directly or indirectly a
51 24 beneficial owner of more than ten percent of any class of the
51 25 outstanding equity securities of the target company.

51 26 (2) The beneficial ownership by the offeror of any class

51 27 of the outstanding equity securities of the target company
51 28 would be increased by more than five percent. However, this
51 29 subparagraph subdivision does not apply if after the
51 30 acquisition of all securities acquired pursuant to the offer,
51 31 the offeror would not be directly or indirectly a beneficial
51 32 owner of more than ten percent of any class of the outstanding
51 33 equity securities of the target company.

51 34 b. "Takeover offer" does not include any of the following:

51 35 (1) An offer in connection with the acquisition of a
52 1 security which, together with all other acquisitions by the
52 2 offeror of securities of the same class of equity securities
52 3 of the target company, would not result in the offeror having
52 4 acquired more than two percent of this class of securities
52 5 during the preceding twelve-month period.

52 6 (2) An offer by the target company to acquire its own
52 7 equity securities if such offer is subject to section 13(e) of
52 8 the Securities Exchange Act of 1934.

52 9 (3) An offer in which the target company is an insurance
52 10 company or insurance holding company subject to regulation by
52 11 the commissioner of insurance, a financial institution subject
52 12 to regulation by the superintendent of banking or the
52 13 superintendent of savings and loan associations, or a public
52 14 utility subject to regulation by the utilities division of the
52 15 department of commerce.

52 16 9. "Target company" means an issuer of publicly traded
52 17 equity securities that has at least twenty percent of its
52 18 equity securities beneficially held by residents of this state
52 19 and has substantial assets in this state. For the purposes of
52 20 this chapter, an equity security is publicly traded if a
52 21 trading market exists for the security. A trading market
52 22 exists if the security is traded on a national securities
52 23 exchange, whether or not registered pursuant to the Securities
52 24 Exchange Act of 1934, or on the over-the-counter market.

52 25 Sec. 18. NEW SECTION. 502.321B REGISTRATION REQUIREMENTS
52 26 == HEARING.

52 27 1. TAKEOVER FILING REQUIRED. It is unlawful for a person
52 28 to make a takeover offer or to acquire any equity securities
52 29 pursuant to the offer unless the offer is valid under this
52 30 article. A takeover offer is effective when the offeror files
52 31 with the administrator a registration statement containing the
52 32 information prescribed in subsection 6. Not later than the
52 33 date of filing of the registration statement, the offeror
52 34 shall deliver a copy of the registration statement by
52 35 certified mail to the target company at its principal place of
53 1 business and publicly disclose the material terms of the
53 2 proposed offer. Public disclosure shall require, at a
53 3 minimum, that a copy of the registration statement be supplied
53 4 to all broker-dealers maintaining an office in this state
53 5 currently quoting the security.

53 6 2. REGISTRATION STATEMENT FILING. The registration
53 7 statement shall be filed on forms prescribed by the
53 8 administrator, and shall be accompanied by a consent by the
53 9 offeror to service of process and filing fee specified in
53 10 section 502.321G, and contain all of the following
53 11 information:

53 12 a. All information specified in subsection 6.

53 13 b. Two copies of all solicitation materials intended to be
53 14 used in the takeover offer, and in the form proposed to be
53 15 published, sent, or delivered to offerees.

53 16 c. Additional information as prescribed by the
53 17 administrator by rule, pursuant to chapter 17A, prior to the
53 18 making of the offer.

53 19 3. REGISTRATION NOT APPROVAL. Registration shall not be
53 20 considered approval by the administrator, and any
53 21 representation to the contrary is unlawful.

53 22 4. SUSPENSION AUTHORIZED. Within three calendar days of
53 23 the date of filing of the registration statement, the
53 24 administrator may, by order, summarily suspend the
53 25 effectiveness of the takeover offer if the administrator
53 26 determines that the registration does not contain all of the
53 27 information specified in subsection 6 or that the takeover
53 28 offer materials provided to offerees do not provide full
53 29 disclosure to offerees of all material information concerning
53 30 the takeover offer. The suspension shall remain in effect
53 31 only until the determination following a hearing held pursuant
53 32 to subsection 5.

53 33 5. HEARING PROCEDURES. A hearing shall be scheduled by
53 34 the administrator for each suspension provided under this
53 35 section. The hearing shall be held within ten calendar days
54 1 of the date of the suspension. The administrator's
54 2 determination following the hearing shall be made within three

54 3 calendar days after the hearing has been completed, but not
54 4 more than sixteen days after the date of the suspension.
54 5 However, the administrator may prescribe different time
54 6 periods than those specified in this subsection by rule or
54 7 order.

54 8 If, based upon the record of the hearing, the administrator
54 9 finds that the registration statement fails to provide for
54 10 full and fair disclosure of all material information
54 11 concerning the offer, or that the takeover is in violation of
54 12 any of the provisions of this article, the administrator shall
54 13 permanently suspend the effectiveness of the takeover offer.
54 14 The administrator may provide an opportunity for the offeror
54 15 to correct disclosure and other deficiencies identified by the
54 16 administrator and to reinstate the takeover offer by filing a
54 17 new or amended registration statement pursuant to this
54 18 section.

54 19 6. REQUIRED INFORMATION. The form required to be filed by
54 20 subsection 2, paragraph "a", shall contain all of the
54 21 following information:

54 22 a. The identity and background of all persons on whose
54 23 behalf the acquisition of any equity security of the target
54 24 company has been or is to be effected.

54 25 b. The source and amount of funds or other consideration
54 26 used or to be used in acquiring any equity security including,
54 27 if applicable, a statement describing any securities which are
54 28 being offered in exchange for the equity securities of the
54 29 target company. If any part of the acquisition price is or
54 30 will be represented by borrowed funds or other consideration,
54 31 the information shall also include a description of the
54 32 material terms of any financing arrangements and the names of
54 33 the parties from whom the funds were or are to be borrowed.

54 34 c. If the offeror is other than a natural person,
54 35 information concerning its organization and operations,
55 1 including all of the following:

55 2 (1) The year, form, and jurisdiction of its organization.

55 3 (2) A description of each class of equity security and
55 4 long-term debt.

55 5 (3) A description of the business conducted by the offeror
55 6 and its subsidiaries and any material changes in the offeror
55 7 or subsidiaries during the past three years.

55 8 (4) A description of the location and character of the
55 9 principal properties of the offeror and its subsidiaries.

55 10 (5) A description of any pending and material legal or
55 11 administrative proceedings in which the offeror or any of its
55 12 affiliates is a party.

55 13 (6) The names of all directors and executive officers of
55 14 the offeror and their material business activities and
55 15 affiliations during the past five years.

55 16 (7) The financial statements of the offeror in a form and
55 17 for periods of time as the administrator may prescribe by rule
55 18 pursuant to section 17A.4, subsection 1.

55 19 d. If the offeror is a natural person, information
55 20 concerning the offeror's identity and background, including
55 21 business activities and affiliations during the past five
55 22 years and a description of any pending and material legal or
55 23 administrative proceedings in which the offeror is a party.

55 24 e. If the purpose of the acquisition is to gain control of
55 25 the target company, the material terms of any plans or
55 26 proposals which the offeror has, upon gaining control, to do
55 27 any of the following:

55 28 (1) Liquidate the target company.

55 29 (2) Sell its assets.

55 30 (3) Effect its merger or consolidation.

55 31 (4) Change the location of its principal place of business
55 32 or of a material portion of its business activities.

55 33 (5) Change its management or policies of employment.

55 34 (6) Materially alter its relationship with suppliers or
55 35 customers or the community in which it operates.

56 1 (7) Make any other major changes in its business,
56 2 corporate structure, management, or personnel.

56 3 (8) Other information which would materially affect the
56 4 shareholders' evaluation of the acquisition.

56 5 f. The number of shares or units of any equity security of
56 6 the target company owned beneficially by the offeror and any
56 7 affiliate or associate of the offeror, together with the name
56 8 and address of each affiliate or associate.

56 9 g. The material terms of any contract, arrangement, or
56 10 understanding with any other person with respect to the equity
56 11 securities of the target company by which the offeror has or
56 12 will acquire any interest in additional equity securities of
56 13 the target company, or is or will be obligated to transfer any

56 14 interest in the equity securities to another.
56 15 h. Information required to be included in a tender offer
56 16 statement pursuant to section 14(d) of the Securities Exchange
56 17 Act of 1934 and the rules and regulations of the securities
56 18 and exchange commission issued pursuant to the Act.
56 19 Sec. 19. NEW SECTION. 502.321C FILING OF SOLICITATION
56 20 MATERIALS.
56 21 Copies of all advertisements, circulars, letters, or other
56 22 materials disseminated by the offeror or the target company,
56 23 soliciting or requesting the acceptance or rejection of a
56 24 takeover offer, shall be filed with the administrator and sent
56 25 to the target company or offeror not later than the time the
56 26 solicitation or request materials are first published, sent,
56 27 or given to the offerees. The administrator may prohibit the
56 28 use of any materials deemed false or misleading.
56 29 Sec. 20. NEW SECTION. 502.321D FRAUDULENT, DECEPTIVE, OR
56 30 MANIPULATIVE ACTS AND PRACTICES PROHIBITED.
56 31 An offeror, target company, affiliate or associate of an
56 32 offeror or target company, or broker-dealer acting on behalf
56 33 of an offeror or target company shall not engage in a
56 34 fraudulent, deceptive, or manipulative act or practice in
56 35 connection with a takeover offer. For purposes of this
57 1 section, a fraudulent, deceptive, or manipulative act or
57 2 practice includes, but is not limited to, any of the
57 3 following:
57 4 1. The publication or use in connection with a takeover
57 5 offer of a false statement of a material fact, or the omission
57 6 of a material fact which renders the statements made
57 7 misleading.
57 8 2. The purchase of any of the equity securities of an
57 9 officer, director, or beneficial owner of five percent or more
57 10 of the equity securities of the target company by the offeror
57 11 or the target company for a consideration greater than that to
57 12 be paid to other shareholders, unless the terms of the
57 13 purchase are disclosed in a registration statement filed
57 14 pursuant to section 502.321B.
57 15 3. The refusal by a target company to permit an offeror
57 16 who is a shareholder of record to examine or copy its list of
57 17 shareholders, pursuant to the applicable corporation statutes,
57 18 for the purpose of making a takeover offer.
57 19 4. The refusal by a target company to mail any
57 20 solicitation materials published by the offeror to its
57 21 security holders with reasonable promptness after receipt from
57 22 the offeror of the materials, together with the reasonable
57 23 expenses of postage and handling.
57 24 5. The solicitation of any offeree for acceptance or
57 25 rejection of a takeover offer, or acquisition of any equity
57 26 security pursuant to a takeover offer, when the offer is
57 27 suspended under section 502.321B, provided, however, that the
57 28 target company may communicate during a suspension with its
57 29 equity security holders to the extent required to respond to
57 30 the takeover offer made pursuant to the Securities Exchange
57 31 Act of 1934.
57 32 Sec. 21. NEW SECTION. 502.321E LIMITATIONS ON OFFERS AND
57 33 OFFERORS.
57 34 1. SAME TERMS REQUIRED. A takeover offer shall contain
57 35 substantially the same terms for shareholders residing within
58 1 and outside this state.
58 2 2. OFFEREE WITHDRAWAL OF SECURITIES. An offeror shall
58 3 provide that any equity securities of a target company
58 4 deposited or tendered pursuant to a takeover offer may be
58 5 withdrawn by or on behalf of an offeree within seven days
58 6 after the date the offer has become effective and after sixty
58 7 days from the date the offer has become effective, or as
58 8 otherwise determined by the administrator pursuant to a rule
58 9 or order issued for the protection of the shareholders.
58 10 3. PRO RATA ACCEPTANCE. If an offeror makes a takeover
58 11 offer for less than all the outstanding equity securities of
58 12 any class and, within ten days after the offer has become
58 13 effective and copies of the offer, or notice of any increase
58 14 in the consideration offered, are first published or sent or
58 15 given to equity security holders, the number of securities
58 16 deposited or tendered pursuant to the offer is greater than
58 17 the number of securities that the offeror has offered to
58 18 accept and pay for, the securities shall be accepted pro rata,
58 19 disregarding fractions, according to the number of securities
58 20 deposited or tendered for each offeree.
58 21 4. INCREASED CONSIDERATION. If an offeror varies the
58 22 terms of a takeover offer before the offer's expiration date
58 23 by increasing the consideration offered to equity security
58 24 holders, the offeror shall pay the increased consideration for

58 25 all equity securities accepted, whether the securities have
58 26 been accepted by the offeror before or after the variation in
58 27 the terms of the offer.
58 28 5. PROCEEDINGS == STOP OFFERS OR ACQUISITIONS. An offeror
58 29 shall not make a takeover offer or acquire any equity
58 30 securities in this state pursuant to a takeover offer during
58 31 the period of time that an administrator's proceeding alleging
58 32 a violation of this chapter is pending against the offeror.
58 33 6. PROCEEDINGS == HALT MOVING OF TARGET COMPANY ASSETS.
58 34 An offeror shall not acquire, remove, or exercise control,
58 35 directly or indirectly, over any target company assets located

59 1 in this state pursuant to a takeover offer during the period
59 2 of time that an administrator's proceeding alleging a
59 3 violation of this chapter is pending against the offeror.
59 4 7. ACQUISITIONS SUBSEQUENT TO TAKEOVER PURCHASES. An
59 5 offeror shall not acquire from a resident of this state an
59 6 equity security of any class of a target company at any time
59 7 within two years following the last purchase of securities
59 8 pursuant to a takeover offer with respect to that class,
59 9 including, but not limited to, acquisitions made by purchase,
59 10 exchange, merger, consolidation, partial or complete
59 11 liquidation, redemption, reverse stock split,
59 12 recapitalization, reorganization, or any other similar
59 13 transaction, unless the holders of the equity securities are
59 14 afforded, at the time of the acquisition, a reasonable
59 15 opportunity to dispose of the securities to the offeror upon
59 16 substantially equivalent terms as those provided in the
59 17 earlier takeover offer.

59 18 Sec. 22. NEW SECTION. 502.321F ADMINISTRATION == RULES
59 19 AND ORDERS.

59 20 1. EXEMPTION AUTHORITY. The administrator may by rule or
59 21 order exempt from any provision of this article the following:
59 22 a. A proposed takeover offer or a category or type of
59 23 takeover offer which the administrator determines does not
59 24 have the purpose or effect of changing or influencing the
59 25 control of a target company.

59 26 b. A proposed takeover offer for which the administrator
59 27 determines that compliance with the sections is not necessary
59 28 for the protection of the offerees.

59 29 c. A person from the requirement of filing statements.

59 30 2. In the event of a conflict between the provisions of
59 31 chapter 17A and the provisions of this article, the provisions
59 32 of this article shall prevail.

59 33 Sec. 23. NEW SECTION. 502.321G FEES.

59 34 The administrator shall charge a nonrefundable filing fee
59 35 of two hundred fifty dollars for a registration statement
60 1 filed by an offeror.

60 2 Sec. 24. NEW SECTION. 502.321H NONAPPLICATION OF
60 3 CORPORATE TAKEOVER LAW.

60 4 If the target company is a public utility, public utility
60 5 holding company, national banking association, bank holding
60 6 company, or savings and loan association which is subject to
60 7 regulation by a federal agency and the takeover of such
60 8 company is subject to approval by the federal agency, this
60 9 article does not apply.

60 10 Sec. 25. NEW SECTION. 502.321I APPLICATION OF SECURITIES
60 11 LAW.

60 12 All of the provisions of this chapter which are not in
60 13 conflict with this article apply to any takeover offer
60 14 involving a target company.

60 15 ARTICLE 4

60 16 BROKER=DEALERS, AGENTS, INVESTMENT ADVISERS,
60 17 INVESTMENT ADVISER REPRESENTATIVES,

60 18 AND FEDERAL COVERED INVESTMENT ADVISERS

60 19 Sec. 26. Section 502.401, Code 2003, is amended by
60 20 striking the section and inserting in lieu thereof the
60 21 following:

60 22 502.401 BROKER=DEALER REGISTRATION REQUIREMENT AND
60 23 EXEMPTIONS.

60 24 1. REGISTRATION REQUIREMENT. It is unlawful for a person
60 25 to transact business in this state as a broker-dealer unless
60 26 the person is registered under this chapter as a broker-dealer
60 27 or is exempt from registration as a broker-dealer under
60 28 subsection 2 or 4.

60 29 2. EXEMPTIONS FROM REGISTRATION. The following persons
60 30 are exempt from the registration requirement of subsection 1:

60 31 a. A broker-dealer without a place of business in this
60 32 state if its only transactions effected in this state are with
60 33 any of the following:

60 34 (1) The issuer of the securities involved in the
60 35 transactions.

61 1 (2) A broker=dealer registered as a broker=dealer under
61 2 this chapter or not required to be registered as a broker=
61 3 dealer under this chapter.

61 4 (3) An institutional investor.

61 5 (4) A nonaffiliated federal covered investment adviser
61 6 with investments under management in excess of one hundred
61 7 million dollars acting for the account of others pursuant to
61 8 discretionary authority in a signed record.

61 9 (5) A bona fide preexisting customer whose principal place
61 10 of residence is not in this state and the broker=dealer is
61 11 registered as a broker=dealer under the Securities Exchange
61 12 Act of 1934 or not required to be registered under the
61 13 Securities Exchange Act of 1934 and is registered under the
61 14 securities act of the state in which the customer maintains a
61 15 principal place of residence.

61 16 (6) A bona fide preexisting customer whose principal place
61 17 of residence is in this state but was not present in this
61 18 state when the customer relationship was established, if all
61 19 of the following apply:

61 20 (a) The broker=dealer is registered under the Securities
61 21 Exchange Act of 1934 or not required to be registered under
61 22 the Securities Exchange Act of 1934 and is registered under
61 23 the securities laws of the state in which the customer
61 24 relationship was established and where the customer had
61 25 maintained a principal place of residence.

61 26 (b) Within forty=five days after the customer's first
61 27 transaction in this state, the broker=dealer files an
61 28 application for registration as a broker=dealer in this state
61 29 and a further transaction is not effected more than seventy=
61 30 five days after the date on which the application is filed,
61 31 or, if earlier, the date on which the administrator notifies
61 32 the broker=dealer that the administrator has denied the
61 33 application for registration or has stayed the pendency of the
61 34 application for good cause.

61 35 (7) Not more than three customers in this state during the
62 1 previous twelve months, in addition to those customers
62 2 specified in this paragraph "a", if the broker=dealer is
62 3 registered under the Securities Exchange Act of 1934 or not
62 4 required to be registered under the Securities Exchange Act of
62 5 1934 and is registered under the securities act of the state
62 6 in which the broker=dealer has its principal place of
62 7 business.

62 8 (8) Any other person exempted by rule adopted or order
62 9 issued under this chapter.

62 10 b. A person that deals solely in United States government
62 11 securities and is supervised as a dealer in government
62 12 securities by the board of governors of the federal reserve
62 13 system, the comptroller of the currency, the federal deposit
62 14 insurance corporation, or the office of thrift supervision.

62 15 3. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful
62 16 for a broker=dealer, or for an issuer engaged in offering,
62 17 offering to purchase, purchasing, or selling securities in
62 18 this state, directly or indirectly, to employ or associate
62 19 with an individual to engage in an activity related to
62 20 securities transactions in this state if the registration of
62 21 the individual is suspended or revoked or the individual is
62 22 barred from employment or association with a broker=dealer, an
62 23 issuer, an investment adviser, or a federal covered investment
62 24 adviser by an order of the administrator under this chapter,
62 25 the securities and exchange commission, or a self=regulatory
62 26 organization. A broker=dealer or issuer does not violate this
62 27 subsection if the broker=dealer or issuer did not know, and in
62 28 the exercise of reasonable care could not have known, of the
62 29 suspension, revocation, or bar. Upon request from a broker=
62 30 dealer or issuer and for good cause, an order under this
62 31 chapter may modify or waive, in whole or in part, the
62 32 application of the prohibitions of this subsection to the
62 33 broker=dealer or issuer.

62 34 4. FOREIGN TRANSACTIONS. A rule adopted or order issued
62 35 under this chapter may permit any of the following:

63 1 a. A broker=dealer that is registered in Canada or other
63 2 foreign jurisdiction and that does not have a place of
63 3 business in this state to effect transactions in securities
63 4 with or for, or attempt to effect the purchase or sale of any
63 5 securities by, any of the following:

63 6 (1) An individual from Canada or other foreign
63 7 jurisdiction who is temporarily present in this state and with
63 8 whom the broker=dealer had a bona fide customer relationship
63 9 before the individual entered the United States.

63 10 (2) An individual from Canada or other foreign
63 11 jurisdiction who is present in this state and whose

63 12 transactions are in a self-directed tax advantaged retirement
63 13 plan of which the individual is the holder or contributor in
63 14 that foreign jurisdiction.

63 15 (3) An individual who is present in this state, with whom
63 16 the broker-dealer customer relationship arose while the
63 17 individual was temporarily or permanently residing in Canada
63 18 or the other foreign jurisdiction.

63 19 b. An agent who represents a broker-dealer that is exempt
63 20 under this subsection to effect transactions in securities or
63 21 attempt to effect the purchase or sale of securities in this
63 22 state as permitted for a broker-dealer described in paragraph
63 23 "a".

63 24 Sec. 27. Section 502.402, Code 2003, is amended by
63 25 striking the section and inserting in lieu thereof the
63 26 following:

63 27 502.402 AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS.

63 28 1. REGISTRATION REQUIREMENT. It is unlawful for an
63 29 individual to transact business in this state as an agent
63 30 unless the individual is registered under this chapter as an
63 31 agent or is exempt from registration as an agent under
63 32 subsection 2.

63 33 2. EXEMPTIONS FROM REGISTRATION. The following
63 34 individuals are exempt from the registration requirement of
63 35 subsection 1:

64 1 a. An individual who represents a broker-dealer in
64 2 effecting transactions in this state limited to those
64 3 described in section 15(h)(2) of the Securities Exchange Act
64 4 of 1934, 15 U.S.C. } 78(o)(2).

64 5 b. An individual who represents a broker-dealer that is
64 6 exempt under section 502.401, subsection 2 or 4.

64 7 c. An individual who represents an issuer with respect to
64 8 an offer or sale of the issuer's own securities or those of
64 9 the issuer's parent or any of the issuer's subsidiaries, and
64 10 who is not compensated in connection with the individual's
64 11 participation by the payment of commissions or other
64 12 remuneration based, directly or indirectly, on transactions in
64 13 those securities.

64 14 d. An individual who represents an issuer and who effects
64 15 transactions in the issuer's securities exempted by section
64 16 502.202, other than section 502.202, subsection 11 or 14.

64 17 e. An individual who represents an issuer that effects
64 18 transactions solely in federal covered securities of the
64 19 issuer, but an individual who effects transactions in a
64 20 federal covered security under section 18(b)(3) or 18(b)(4)(D)
64 21 of the Securities Act of 1933, 15 U.S.C. } 77r(b)(3) or
64 22 77r(b)(4)(D), is not exempt if the individual is compensated
64 23 in connection with the agent's participation by the payment of
64 24 commissions or other remuneration based, directly or
64 25 indirectly, on transactions in those securities.

64 26 f. An individual who represents a broker-dealer registered
64 27 in this state under section 502.401, subsection 1, or exempt
64 28 from registration under section 502.401, subsection 2, in the
64 29 offer and sale of securities for an account of a nonaffiliated
64 30 federal covered investment adviser with investments under
64 31 management in excess of one hundred million dollars acting for
64 32 the account of others pursuant to discretionary authority in a
64 33 signed record.

64 34 g. An individual who represents an issuer in connection
64 35 with the purchase of the issuer's own securities.

65 1 h. An individual who represents an issuer and who
65 2 restricts participation to performing clerical or ministerial
65 3 acts.

65 4 i. Any other individual exempted by rule adopted or order
65 5 issued under this chapter.

65 6 3. REGISTRATION EFFECTIVE ONLY WHILE EMPLOYED OR
65 7 ASSOCIATED. The registration of an agent is effective only
65 8 while the agent is employed by or associated with a broker=
65 9 dealer registered under this chapter or an issuer that is
65 10 offering, selling, or purchasing its securities in this state.

65 11 4. LIMIT ON EMPLOYMENT OR ASSOCIATION. It is unlawful for
65 12 a broker-dealer, or an issuer engaged in offering, selling, or
65 13 purchasing securities in this state, to employ or associate
65 14 with an agent who transacts business in this state on behalf
65 15 of broker-dealers or issuers unless the agent is registered
65 16 under subsection 1 or exempt from registration under
65 17 subsection 2.

65 18 5. LIMIT ON AFFILIATIONS. An individual shall not act as
65 19 an agent for more than one broker-dealer or one issuer at a
65 20 time, unless the broker-dealer or the issuer for which the
65 21 agent acts is affiliated by direct or indirect common control
65 22 or is authorized by rule or order under this chapter.

65 23 Sec. 28. Section 502.403, Code 2003, is amended by
65 24 striking the section and inserting in lieu thereof the
65 25 following:
65 26 502.403 INVESTMENT ADVISER REGISTRATION REQUIREMENT AND
65 27 EXEMPTIONS.
65 28 1. REGISTRATION REQUIREMENT. It is unlawful for a person
65 29 to transact business in this state as an investment adviser
65 30 unless the person is registered under this chapter as an
65 31 investment adviser or is exempt from registration as an
65 32 investment adviser under subsection 2.
65 33 2. EXEMPTIONS FROM REGISTRATION. All of the following
65 34 persons are exempt from the registration requirement of
65 35 subsection 1:
66 1 a. A person without a place of business in this state that
66 2 is registered under the securities act of the state in which
66 3 the person has its principal place of business if its only
66 4 clients in this state are any of the following:
66 5 (1) Federal covered investment advisers, investment
66 6 advisers registered under this chapter, or broker-dealers
66 7 registered under this chapter.
66 8 (2) Institutional investors.
66 9 (3) Bona fide preexisting clients whose principal places
66 10 of residence are not in this state if the investment adviser
66 11 is registered under the securities act of the state in which
66 12 the clients maintain principal places of residence.
66 13 (4) Any other client exempted by rule adopted or order
66 14 issued under this chapter.
66 15 b. A person without a place of business in this state if
66 16 the person has had, during the preceding twelve months, not
66 17 more than five clients that are resident in this state in
66 18 addition to those specified under paragraph "a".
66 19 c. Any other person exempted by rule adopted or order
66 20 issued under this chapter.
66 21 3. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful
66 22 for an investment adviser, directly or indirectly, to employ
66 23 or associate with an individual to engage in an activity
66 24 related to investment advice in this state if the registration
66 25 of the individual is suspended or revoked or the individual is
66 26 barred from employment or association with an investment
66 27 adviser, federal covered investment adviser, or broker-dealer
66 28 by an order under this chapter, the securities and exchange
66 29 commission, or a self-regulatory organization, unless the
66 30 investment adviser did not know, and in the exercise of
66 31 reasonable care could not have known, of the suspension,
66 32 revocation, or bar. Upon request from the investment adviser
66 33 and for good cause, the administrator, by order, may waive, in
66 34 whole or in part, the application of the prohibitions of this
66 35 subsection to the investment adviser.
67 1 4. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION
67 2 REQUIRED. It is unlawful for an investment adviser to employ
67 3 or associate with an individual required to be registered
67 4 under this chapter as an investment adviser representative who
67 5 transacts business in this state on behalf of the investment
67 6 adviser unless the individual is registered under section
67 7 502.404, subsection 1, or is exempt from registration under
67 8 section 502.404, subsection 2.
67 9 Sec. 29. Section 502.404, Code 2003, is amended by
67 10 striking the section and inserting in lieu thereof the
67 11 following:
67 12 502.404 INVESTMENT ADVISER REPRESENTATIVE REGISTRATION
67 13 REQUIREMENT AND EXEMPTIONS.
67 14 1. REGISTRATION REQUIREMENT. It is unlawful for an
67 15 individual to transact business in this state as an investment
67 16 adviser representative unless the individual is registered
67 17 under this chapter as an investment adviser representative or
67 18 is exempt from registration as an investment adviser
67 19 representative under subsection 2.
67 20 2. EXEMPTIONS FROM REGISTRATION. All of the following
67 21 individuals are exempt from the registration requirement of
67 22 subsection 1:
67 23 a. An individual who is employed by or associated with an
67 24 investment adviser that is exempt from registration under
67 25 section 502.403, subsection 2, or a federal covered investment
67 26 adviser that is excluded from the notice filing requirements
67 27 of section 502.405.
67 28 b. Any other individual exempted by rule adopted or order
67 29 issued under this chapter.
67 30 3. REGISTRATION EFFECTIVE ONLY WHILE EMPLOYED OR
67 31 ASSOCIATED. The registration of an investment adviser
67 32 representative is not effective while the investment adviser
67 33 representative is not employed by or associated with an

67 34 investment adviser registered under this chapter or a federal
67 35 covered investment adviser that has made or is required to
68 1 make a notice filing under section 502.405.
68 2 4. LIMIT ON AFFILIATIONS. An individual may transact
68 3 business as an investment adviser representative for more than
68 4 one investment adviser or federal covered investment adviser
68 5 unless a rule adopted or order issued under this chapter
68 6 prohibits or limits an individual from acting as an investment
68 7 adviser representative for more than one investment adviser or
68 8 federal covered investment adviser.

68 9 5. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful
68 10 for an individual acting as an investment adviser
68 11 representative, directly or indirectly, to conduct business in
68 12 this state on behalf of an investment adviser or a federal
68 13 covered investment adviser if the registration of the
68 14 individual as an investment adviser representative is
68 15 suspended or revoked or the individual is barred from
68 16 employment or association with an investment adviser or a
68 17 federal covered investment adviser by an order under this
68 18 chapter, the securities and exchange commission, or a self=
68 19 regulatory organization. Upon request from a federal covered
68 20 investment adviser and for good cause, the administrator, by
68 21 order issued, may waive, in whole or in part, the application
68 22 of the requirements of this subsection to the federal covered
68 23 investment adviser.

68 24 6. REFERRAL FEES. An investment adviser registered under
68 25 this chapter, a federal covered investment adviser that has
68 26 filed a notice under section 502.405, or a broker=dealer
68 27 registered under this chapter is not required to employ or
68 28 associate with an individual as an investment adviser
68 29 representative if the only compensation paid to the individual
68 30 for a referral of investment advisory clients is paid to an
68 31 investment adviser registered under this chapter, a federal
68 32 covered investment adviser who has filed a notice under
68 33 section 502.405, or a broker=dealer registered under this
68 34 chapter with whom the individual is employed or associated as
68 35 an investment adviser representative.

69 1 Sec. 30. Section 502.405, Code 2003, is amended by
69 2 striking the section and inserting in lieu thereof the
69 3 following:

69 4 502.405 FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING
69 5 REQUIREMENT.

69 6 1. NOTICE FILING REQUIREMENT. Except with respect to a
69 7 federal covered investment adviser described in subsection 2,
69 8 it is unlawful for a federal covered investment adviser to
69 9 transact business in this state as a federal covered
69 10 investment adviser unless the federal covered investment
69 11 adviser complies with subsection 3.

69 12 2. NOTICE FILING REQUIREMENT NOT REQUIRED. The following
69 13 federal covered investment advisers are not required to comply
69 14 with subsection 3:

69 15 a. A federal covered investment adviser without a place of
69 16 business in this state if its only clients in this state are
69 17 any of the following:

69 18 (1) Federal covered investment advisers, investment
69 19 advisers registered under this chapter, and broker=dealers
69 20 registered under this chapter.

69 21 (2) Institutional investors.

69 22 (3) Bona fide preexisting clients whose principal places
69 23 of residence are not in this state.

69 24 (4) Other clients specified by rule adopted or order
69 25 issued under this chapter.

69 26 b. A federal covered investment adviser without a place of
69 27 business in this state if the person has had, during the
69 28 preceding twelve months, not more than five clients that are
69 29 resident in this state in addition to those specified under
69 30 paragraph "a".

69 31 c. Any other person excluded by rule adopted or order
69 32 issued under this chapter.

69 33 3. NOTICE FILING PROCEDURE. A person acting as a federal
69 34 covered investment adviser, not excluded under subsection 2,
69 35 shall file a notice, a consent to service of process complying
70 1 with section 502.611, and such records as have been filed with
70 2 the securities and exchange commission under the Investment
70 3 Advisers Act of 1940 required by rule adopted or order issued
70 4 under this chapter and pay the fees specified in section
70 5 502.410, subsection 5.

70 6 4. EFFECTIVENESS OF FILING. The notice under subsection 3
70 7 becomes effective upon its filing.

70 8 Sec. 31. Section 502.406, Code 2003, is amended by
70 9 striking the section and inserting in lieu thereof the

70 10 following:

70 11 502.406 REGISTRATION BY BROKER=DEALER, AGENT, INVESTMENT
70 12 ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE.

70 13 1. APPLICATION FOR INITIAL REGISTRATION. A person shall
70 14 register as a broker=dealer, agent, investment adviser, or
70 15 investment adviser representative by filing an application and
70 16 a consent to service of process complying with section
70 17 502.611, and paying the fee specified in section 502.410 and
70 18 any reasonable fees charged by the designee of the
70 19 administrator for processing the filing. The application must
70 20 contain all of the following:

70 21 a. The information or record required for the filing of a
70 22 uniform application.

70 23 b. Upon request by the administrator, any other financial
70 24 or other information or record that the administrator
70 25 determines is appropriate.

70 26 2. AMENDMENT. If the information or record contained in
70 27 an application filed under subsection 1 is or becomes
70 28 inaccurate or incomplete in a material respect, the registrant
70 29 shall promptly file a correcting amendment.

70 30 3. EFFECTIVENESS OF REGISTRATION. If an order is not in
70 31 effect and a proceeding is not pending under section 502.412,
70 32 registration becomes effective at noon on the forty=fifth day
70 33 after a completed application is filed, unless the
70 34 registration is denied. A rule adopted or order issued under
70 35 this chapter may set an earlier effective date or may defer
71 1 the effective date until noon on the forty=fifth day after the
71 2 filing of any amendment completing the application.

71 3 4. REGISTRATION RENEWAL. A registration is effective
71 4 until midnight on December 31 of the year for which the
71 5 application for registration is filed. Unless an order is in
71 6 effect under section 502.412, a registration may be
71 7 automatically renewed each year by filing such records as are
71 8 required by rule adopted or order issued under this chapter,
71 9 by paying the fee specified in section 502.410, and by paying
71 10 costs charged by the designee of the administrator for
71 11 processing the filings.

71 12 5. ADDITIONAL CONDITIONS OR WAIVERS. A rule adopted or
71 13 order issued under this chapter may impose such other
71 14 conditions, not inconsistent with the National Securities
71 15 Markets Improvement Act of 1996. An order issued under this
71 16 chapter may waive, in whole or in part, specific requirements
71 17 in connection with registration as are in the public interest
71 18 and for the protection of investors.

71 19 Sec. 32. Section 502.407, Code 2003, is amended by
71 20 striking the section and inserting in lieu thereof the
71 21 following:

71 22 502.407 SUCCESSION AND CHANGE IN REGISTRATION OF BROKER=
71 23 DEALER OR INVESTMENT ADVISER.

71 24 1. SUCCESSION. A broker=dealer or investment adviser may
71 25 succeed to the current registration of another broker=dealer
71 26 or investment adviser or a notice filing of a federal covered
71 27 investment adviser, and a federal covered investment adviser
71 28 may succeed to the current registration of an investment
71 29 adviser or notice filing of another federal covered investment
71 30 adviser, by filing as a successor an application for
71 31 registration pursuant to section 502.401 or 502.403 or a
71 32 notice pursuant to section 502.405 for the unexpired portion
71 33 of the current registration or notice filing.

71 34 2. ORGANIZATIONAL CHANGE. A broker=dealer or investment
71 35 adviser that changes its form of organization or state of
72 1 incorporation or organization may continue its registration by
72 2 filing an amendment to its registration if the change does not
72 3 involve a material change in its financial condition or
72 4 management. The amendment becomes effective when filed or on
72 5 a date designated by the registrant in its filing. The new
72 6 organization is a successor to the original registrant for the
72 7 purposes of this chapter. If there is a material change in
72 8 financial condition or management, the broker=dealer or
72 9 investment adviser shall file a new application for
72 10 registration. A predecessor registered under this chapter
72 11 shall stop conducting its securities business other than
72 12 winding down transactions and shall file for withdrawal of
72 13 broker=dealer or investment adviser registration within forty=
72 14 five days after filing its amendment to effect succession.

72 15 3. NAME CHANGE. A broker=dealer or investment adviser
72 16 that changes its name may continue its registration by filing
72 17 an amendment to its registration. The amendment becomes
72 18 effective when filed or on a date designated by the
72 19 registrant.

72 20 4. CHANGE OF CONTROL. A change of control of a broker=

72 21 dealer or investment adviser may be made in accordance with a
72 22 rule adopted or order issued under this chapter.
72 23 Sec. 33. Section 502.408, Code 2003, is amended by
72 24 striking the section and inserting in lieu thereof the
72 25 following:
72 26 502.408 TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENT
72 27 AND INVESTMENT ADVISER REPRESENTATIVE AND TRANSFER OF
72 28 EMPLOYMENT OR ASSOCIATION.
72 29 1. NOTICE OF TERMINATION. If an agent registered under
72 30 this chapter terminates employment by or association with a
72 31 broker=dealer or issuer, or if an investment adviser
72 32 representative registered under this chapter terminates
72 33 employment by or association with an investment adviser or
72 34 federal covered investment adviser, or if either registrant
72 35 terminates activities that require registration as an agent or
73 1 investment adviser representative, the broker=dealer, issuer,
73 2 investment adviser, or federal covered investment adviser
73 3 shall promptly file a notice of termination. If the
73 4 registrant learns that the broker=dealer, issuer, investment
73 5 adviser, or federal covered investment adviser has not filed
73 6 the notice, the registrant may do so.
73 7 2. TRANSFER OF EMPLOYMENT OR ASSOCIATION. If an agent
73 8 registered under this chapter terminates employment by or
73 9 association with a broker=dealer registered under this chapter
73 10 and begins employment by or association with another broker=
73 11 dealer registered under this chapter, or if an investment
73 12 adviser representative registered under this chapter
73 13 terminates employment by or association with an investment
73 14 adviser registered under this chapter or a federal covered
73 15 investment adviser that has filed a notice under section
73 16 502.405 and begins employment by or association with another
73 17 investment adviser registered under this chapter or a federal
73 18 covered investment adviser that has filed a notice under
73 19 section 502.405, then upon the filing by or on behalf of the
73 20 registrant, within thirty days after the termination, of an
73 21 application for registration that complies with the
73 22 requirement of section 502.406, subsection 1, and payment of
73 23 the filing fee required under section 502.410, the
73 24 registration of the agent or investment adviser representative
73 25 is one of the following:
73 26 a. Immediately effective as of the date of the completed
73 27 filing, if the agent's central registration depository record
73 28 or successor record or the investment adviser representative's
73 29 investment adviser registration depository record or successor
73 30 record does not contain a new or amended disciplinary
73 31 disclosure within the previous twelve months.
73 32 b. Temporarily effective as of the date of the completed
73 33 filing, if the agent's central registration depository record
73 34 or successor record or the investment adviser representative's
73 35 investment adviser registration depository record or successor
74 1 record contains a new or amended disciplinary disclosure
74 2 within the preceding twelve months.
74 3 3. WITHDRAWAL OF TEMPORARY REGISTRATION. The
74 4 administrator may withdraw a temporary registration if there
74 5 are or were grounds for discipline as specified in section
74 6 502.412 and the administrator does so within thirty days after
74 7 the filing of the application. If the administrator does not
74 8 withdraw the temporary registration within the thirty=day
74 9 period, registration becomes automatically effective on the
74 10 thirty=first day after filing.
74 11 4. POWER TO PREVENT REGISTRATION. The administrator may
74 12 prevent the effectiveness of a transfer of an agent or
74 13 investment adviser representative under subsection 2,
74 14 paragraph "a" or "b", based on the public interest and the
74 15 protection of investors.
74 16 5. TERMINATION OF REGISTRATION OR APPLICATION FOR
74 17 REGISTRATION. If the administrator determines that a
74 18 registrant or applicant for registration is no longer in
74 19 existence or has ceased to act as a broker=dealer, agent,
74 20 investment adviser, or investment adviser representative, or
74 21 is the subject of an adjudication of incapacity or is subject
74 22 to the control of a committee, conservator, or guardian, or
74 23 cannot reasonably be located, a rule adopted or order issued
74 24 under this chapter may require that the registration be
74 25 canceled or terminated or the application denied. The
74 26 administrator may reinstate a canceled or terminated
74 27 registration, with or without hearing, and may make the
74 28 registration retroactive.
74 29 Sec. 34. NEW SECTION. 502.409 WITHDRAWAL OF REGISTRATION
74 30 OF BROKER=DEALER, AGENT, INVESTMENT ADVISER, AND INVESTMENT
74 31 ADVISER REPRESENTATIVE.

74 32 1. WITHDRAWAL OF REGISTRATION. Withdrawal of registration
74 33 by a broker-dealer, agent, investment adviser, or investment
74 34 adviser representative becomes effective sixty days after the
74 35 filing of the application to withdraw or within any shorter
75 1 period as provided by rule adopted or order issued under this
75 2 chapter unless a revocation or suspension proceeding is
75 3 pending when the application is filed. If a proceeding is
75 4 pending, withdrawal becomes effective when and upon such
75 5 conditions as required by rule adopted or order issued under
75 6 this chapter. The administrator may institute a revocation or
75 7 suspension proceeding under section 502.412 within one year
75 8 after the withdrawal became effective automatically and issue
75 9 a revocation or suspension order as of the last date on which
75 10 registration was effective if a proceeding is not pending.

75 11 1A. CEASING TO DO BUSINESS AND ABANDONED FILINGS. If the
75 12 administrator finds that any registrant or applicant for
75 13 registration is no longer in existence or has ceased to do
75 14 business as a broker-dealer, agent, investment adviser, or
75 15 investment adviser representative, or is subject to an
75 16 adjudication of mental incompetence or to the control of a
75 17 committee, conservator, or guardian, or cannot be located
75 18 after search, the administrator may by order revoke the
75 19 registration or application. If the administrator finds that
75 20 the applicant for registration or registrant has abandoned the
75 21 application or registration, the administrator may enter an
75 22 order of abandonment, and limit or eliminate further
75 23 consideration of the application or registration, as provided
75 24 by the administrator. The administrator may enter an order
75 25 under this subsection if notice is sent to the applicant or
75 26 registrant, and either the administrator does not receive a
75 27 response by the applicant or registrant within forty-five days
75 28 from the date that the notice was delivered, or action is not
75 29 taken by the applicant or registrant within the time specified
75 30 by the administrator in the notice, whichever is later.

75 31 Sec. 35. NEW SECTION. 502.410 FILING FEES.

75 32 1. BROKER-DEALERS. A person shall pay a fee of two
75 33 hundred dollars when initially filing an application for
75 34 registration as a broker-dealer and a fee of two hundred
75 35 dollars when filing a renewal of registration as a broker=
76 1 dealer. If the filing results in a denial or withdrawal, the
76 2 administrator shall retain the fee.

76 3 2. AGENTS. The fee for an individual is thirty dollars
76 4 when filing an application for registration as an agent, a fee
76 5 of thirty dollars when filing a renewal of registration as an
76 6 agent, and a fee of thirty dollars when filing for a change of
76 7 registration as an agent. If the filing results in a denial
76 8 or withdrawal, the administrator shall retain the fee.

76 9 3. INVESTMENT ADVISERS. A person shall pay a fee of one
76 10 hundred dollars when filing an application for registration as
76 11 an investment adviser and a fee of one hundred dollars when
76 12 filing a renewal of registration as an investment adviser. If
76 13 the filing results in a denial or withdrawal, the
76 14 administrator shall retain the fee.

76 15 4. INVESTMENT ADVISER REPRESENTATIVES. The fee for an
76 16 individual is thirty dollars when filing an application for
76 17 registration as an investment adviser representative, a fee of
76 18 thirty dollars when filing a renewal of registration as an
76 19 investment adviser representative, and a fee of thirty dollars
76 20 when filing a change of registration as an investment adviser
76 21 representative. If the filing results in a denial or
76 22 withdrawal, the administrator shall retain the fee.

76 23 However, an investment adviser representative is not
76 24 required to pay a filing fee if the investment adviser is a
76 25 sole proprietorship or the substantial equivalent and the
76 26 investment adviser representative is the same individual as
76 27 the investment adviser.

76 28 5. FEDERAL COVERED INVESTMENT ADVISERS. A federal covered
76 29 investment adviser required to file a notice under section
76 30 502.405 shall pay an initial fee of one hundred dollars and an
76 31 annual notice fee of one hundred dollars.

76 32 6. PAYMENT. A person required to pay a filing or notice
76 33 fee under this section may transmit the fee through or to a
76 34 designee as a rule or order provides under this chapter.

76 35 Sec. 36. NEW SECTION. 502.411 POST-REGISTRATION
77 1 REQUIREMENTS.

77 2 1. FINANCIAL REQUIREMENTS. Subject to section 15(h) of
77 3 the Securities Exchange Act of 1934, 15 U.S.C. } 78o(h), or
77 4 section 222 of the Investment Advisers Act of 1940, 15 U.S.C.
77 5 } 80b-22, a rule adopted or order issued under this chapter
77 6 may establish minimum financial requirements for broker=
77 7 dealers registered or required to be registered under this

77 8 chapter and investment advisers registered or required to be
77 9 registered under this chapter.

77 10 2. FINANCIAL REPORTS. Subject to section 15(h) of the
77 11 Securities Exchange Act of 1934, 15 U.S.C. } 78o(h), or
77 12 section 222(b) of the Investment Advisers Act of 1940, 15
77 13 U.S.C. } 80b-22, a broker-dealer registered or required to be
77 14 registered under this chapter and an investment adviser
77 15 is or becomes inaccurate or incomplete in a material respect,
77 16 shall file such financial reports as are required by a rule
77 17 adopted or order issued under this chapter. If the
77 18 information contained in a record filed under this subsection
77 19 is or becomes inaccurate or incomplete in a material respect,
77 20 the registrant shall promptly file a correcting amendment.
77 21 The administrator may, by rule, assess a reasonable charge for
77 22 the late filing of a financial report under this subsection.

77 23 3. RECORDKEEPING. Subject to section 15(h) of the
77 24 Securities Exchange Act of 1934, 15 U.S.C. } 78o(h), or
77 25 section 222 of the Investment Advisers Act of 1940, 15 U.S.C.
77 26 } 80b-22, all of the following apply:

77 27 a. A broker-dealer registered or required to be registered
77 28 under this chapter and an investment adviser registered or
77 29 required to be registered under this chapter shall make and
77 30 maintain the accounts, correspondence, memoranda, papers,
77 31 books, and other records required by rule adopted or order
77 32 issued under this chapter.

77 33 b. Broker-dealer records required to be maintained under
77 34 paragraph "a" may be maintained in any form of data storage
77 35 acceptable under section 17(a) of the Securities Exchange Act
78 1 of 1934, 15 U.S.C. } 78q(a), if they are readily accessible to
78 2 the administrator.

78 3 c. Investment adviser records required to be maintained
78 4 under paragraph "a" may be maintained in any form of data
78 5 storage required by rule adopted or order issued under this
78 6 chapter.

78 7 4. AUDITS OR INSPECTIONS. The records of a broker-dealer
78 8 registered or required to be registered under this chapter and
78 9 of an investment adviser registered or required to be
78 10 registered under this chapter are subject to such reasonable
78 11 periodic, special, or other audits or inspections by a
78 12 representative of the administrator, within or without this
78 13 state, as the administrator considers necessary or appropriate
78 14 in the public interest and for the protection of investors.
78 15 An audit or inspection may be made at any time and without
78 16 prior notice. The administrator may copy, and remove for
78 17 audit or inspection copies of, all records the administrator
78 18 reasonably considers necessary or appropriate to conduct the
78 19 audit or inspection. The administrator may assess a
78 20 reasonable charge for conducting an audit or inspection under
78 21 this subsection.

78 22 5. CUSTODY AND DISCRETIONARY AUTHORITY BOND OR INSURANCE.
78 23 Subject to section 15(h) of the Securities Exchange Act of
78 24 1934, 15 U.S.C. } 78o(h), or section 222 of the Investment
78 25 Advisers Act of 1940, 15 U.S.C. } 80b-22, a rule adopted or
78 26 order issued under this chapter may require a broker-dealer or
78 27 investment adviser that has custody of or discretionary
78 28 authority over funds or securities of a customer or client to
78 29 obtain insurance or post a bond or other satisfactory form of
78 30 security in an amount the administrator shall prescribe. The
78 31 administrator may determine the requirements of the insurance,
78 32 bond, or other satisfactory form of security. Insurance or a
78 33 bond or other satisfactory form of security shall not be
78 34 required of a broker-dealer registered under this chapter
78 35 whose net capital exceeds, or of an investment adviser
79 1 registered under this chapter whose minimum financial
79 2 requirements exceed, the amounts required by rule or order
79 3 under this chapter. The insurance, bond, or other
79 4 satisfactory form of security must permit an action by a
79 5 person to enforce any liability on the insurance, bond, or
79 6 other satisfactory form of security if instituted within the
79 7 time limitations in section 502.509, subsection 10, paragraph
79 8 "b".

79 9 6. REQUIREMENTS FOR CUSTODY. Subject to section 15(h) of
79 10 the Securities Exchange Act of 1934, 15 U.S.C. } 78o(h), or
79 11 section 222 of the Investment Advisers Act of 1940, 15 U.S.C.
79 12 } 80b-22, an agent shall not have custody of funds or
79 13 securities of a customer except under the supervision of a
79 14 broker-dealer and an investment adviser representative shall
79 15 not have custody of funds or securities of a client except
79 16 under the supervision of an investment adviser or a federal
79 17 covered investment adviser. A rule adopted or order issued
79 18 under this chapter may prohibit, limit, or impose conditions

79 19 on a broker=dealer regarding custody of funds or securities of
79 20 a customer and on an investment adviser regarding custody of
79 21 securities or funds of a client.

79 22 7. INVESTMENT ADVISER BROCHURE RULE. With respect to an
79 23 investment adviser registered or required to be registered
79 24 under this chapter, a rule adopted or order issued under this
79 25 chapter may require that information or other records be
79 26 furnished or disseminated to clients or prospective clients in
79 27 this state as necessary or appropriate in the public interest
79 28 and for the protection of investors and advisory clients.

79 29 8. CONTINUING EDUCATION. A rule adopted or order issued
79 30 under this chapter may require an individual registered under
79 31 section 502.402 or 502.404 to participate in a continuing
79 32 education program approved by the securities and exchange
79 33 commission and administered by a self-regulatory organization
79 34 or, in the absence of such a program, a rule adopted or order
79 35 issued under this chapter may require continuing education for
80 1 an individual registered under section 502.404.

80 2 Sec. 37. NEW SECTION. 502.412 DENIAL, REVOCATION,
80 3 SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION, OR LIMITATION
80 4 OF REGISTRATION.

80 5 1. DISCIPLINARY CONDITIONS == APPLICANTS. If the
80 6 administrator finds that the order is in the public interest
80 7 and subsection 4 authorizes the action, an order issued under
80 8 this chapter may deny an application, or may condition or
80 9 limit registration of an applicant to be a broker=dealer,
80 10 agent, investment adviser, or investment adviser
80 11 representative, and, if the applicant is a broker=dealer or
80 12 investment adviser, of a partner, officer, director, or person
80 13 having a similar status or performing similar functions, or a
80 14 person directly or indirectly in control, of the broker=dealer
80 15 or investment adviser.

80 16 2. DISCIPLINARY CONDITIONS == REGISTRANTS. If the
80 17 administrator finds that the order is in the public interest
80 18 and subsection 4 authorizes the action, an order issued under
80 19 this chapter may revoke, suspend, condition, or limit the
80 20 registration of a registrant and, if the registrant is a
80 21 broker=dealer or investment adviser, of a partner, officer,
80 22 director, or person having a similar status or performing
80 23 similar functions, or a person directly or indirectly in
80 24 control, of the broker=dealer or investment adviser. However,
80 25 the administrator shall not do any of the following:

80 26 a. Institute a revocation or suspension proceeding under
80 27 this subsection based on an order issued under a law of
80 28 another state that is reported to the administrator or a
80 29 designee of the administrator more than one year after the
80 30 date of the order on which it is based.

80 31 b. Under subsection 4, paragraph "e", subparagraph (1) or
80 32 (2), issue an order on the basis of an order issued under the
80 33 securities act of another state unless the other order was
80 34 based on conduct for which subsection 4 would authorize the
80 35 action had the conduct occurred in this state.

81 1 3. DISCIPLINARY PENALTIES == REGISTRANTS. If the
81 2 administrator finds that the order is in the public interest
81 3 and subsection 4, paragraphs "a" through "f", "h", "i", "j",
81 4 or "l", and "m", authorizes the action, an order under this
81 5 chapter may censure, impose a bar, or impose a civil penalty
81 6 in an amount not to exceed a maximum of five thousand dollars
81 7 for a single violation or five hundred thousand dollars for
81 8 more than one violation, on a registrant, and, if the
81 9 registrant is a broker=dealer or investment adviser, a
81 10 partner, officer, director, or person having a similar status
81 11 or performing similar functions, or a person directly or
81 12 indirectly in control, of the broker=dealer or investment
81 13 adviser.

81 14 4. GROUNDS FOR DISCIPLINE. A person may be disciplined
81 15 under subsections 1 through 3 if any of the following applies:

81 16 a. The person has filed an application for registration in
81 17 this state under this chapter or the predecessor chapter
81 18 within the previous ten years, which, as of the effective date
81 19 of registration or as of any date after filing in the case of
81 20 an order denying effectiveness, was incomplete in any material
81 21 respect or contained a statement that, in light of the
81 22 circumstances under which it was made, was false or misleading
81 23 with respect to a material fact.

81 24 b. The person willfully violated or willfully failed to
81 25 comply with this chapter or the predecessor chapter or a rule
81 26 adopted or order issued under this chapter or the predecessor
81 27 chapter within the previous ten years.

81 28 c. The person has been convicted of a felony or within the
81 29 previous ten years has been convicted of a misdemeanor

81 30 involving a security, a commodity future or option contract,
81 31 or an aspect of a business involving securities, commodities,
81 32 investments, franchises, insurance, banking, or finance.

81 33 d. The person is enjoined or restrained by a court of
81 34 competent jurisdiction in an action instituted by the
81 35 administrator under this chapter or the predecessor chapter, a
82 1 state, the securities and exchange commission, or the United
82 2 States from engaging in or continuing an act, practice, or
82 3 course of business involving an aspect of a business involving
82 4 securities, commodities, investments, franchises, insurance,
82 5 banking, or finance.

82 6 e. The person is the subject of an order, issued after
82 7 notice and opportunity for hearing, by any of the following:

82 8 (1) The securities or other financial services regulator
82 9 of a state or the securities and exchange commission or other
82 10 federal agency denying, revoking, barring, or suspending
82 11 registration as a broker-dealer, agent, investment adviser,
82 12 federal covered investment adviser, or investment adviser
82 13 representative.

82 14 (2) The securities regulator of a state or the securities
82 15 and exchange commission against a broker-dealer, agent,
82 16 investment adviser, investment adviser representative, or
82 17 federal covered investment adviser.

82 18 (3) The securities and exchange commission or a self=
82 19 regulatory organization suspending or expelling the registrant
82 20 from membership in the self-regulatory organization.

82 21 (4) A court adjudicating a United States postal service
82 22 fraud order.

82 23 (5) The insurance regulator of a state denying,
82 24 suspending, or revoking registration as an insurance agent or
82 25 insurance producer.

82 26 (6) A depository institution regulator or financial
82 27 services regulator suspending or barring the person from the
82 28 depository institution or other financial services business.

82 29 f. The person is the subject of an adjudication or
82 30 determination, after notice and opportunity for hearing, by
82 31 the securities and exchange commission, the commodity futures
82 32 trading commission, the federal trade commission, a federal
82 33 depository institution regulator, or a depository institution,
82 34 insurance, or other financial services regulator of a state
82 35 that the person willfully violated the Securities Act of 1933,
83 1 the Securities Exchange Act of 1934, the Investment Advisers
83 2 Act of 1940, the Investment Company Act of 1940, or the
83 3 Commodity Exchange Act, the securities or commodities law of a
83 4 state, or a federal or state law under which a business
83 5 involving investments, franchises, insurance, banking, or
83 6 finance is regulated.

83 7 g. The person is insolvent, either because the person's
83 8 liabilities exceed the person's assets or because the person
83 9 cannot meet the person's obligations as they mature, but the
83 10 administrator shall not enter an order against an applicant or
83 11 registrant under this paragraph without a finding of
83 12 insolvency as to the applicant or registrant.

83 13 h. The person refuses to allow or otherwise impedes the
83 14 administrator from conducting an audit or inspection under
83 15 section 502.411, subsection 4, or refuses access to a
83 16 registrant's office to conduct an audit or inspection under
83 17 section 502.411, subsection 4.

83 18 i. The person has failed to reasonably supervise an agent,
83 19 investment adviser representative, or other individual, if the
83 20 agent, investment adviser representative, or other individual
83 21 was subject to the person's supervision and committed a
83 22 violation of this chapter or the predecessor chapter or a rule
83 23 adopted or order issued under this chapter or the predecessor
83 24 chapter within the previous ten years.

83 25 j. The person has not paid the proper filing fee within
83 26 thirty days after having been notified by the administrator of
83 27 a deficiency, but the administrator shall vacate an order
83 28 under this paragraph when the deficiency is corrected.

83 29 k. The person after notice and opportunity for a hearing
83 30 has been found within the previous ten years to have done any
83 31 of the following:

83 32 (1) By a court of competent jurisdiction to have willfully
83 33 violated the laws of a foreign jurisdiction under which the
83 34 business of securities, commodities, investment, franchises,
83 35 insurance, banking, or finance is regulated.

84 1 (2) To have been the subject of an order of a securities
84 2 regulator of a foreign jurisdiction denying, revoking, or
84 3 suspending the right to engage in the business of securities
84 4 as a broker-dealer, agent, investment adviser, investment
84 5 adviser representative, or similar person.

84 6 (3) To have been suspended or expelled from membership by
84 7 or participation in a securities exchange or securities
84 8 association operating under the securities laws of a foreign
84 9 jurisdiction.

84 10 l. The person is the subject of a cease and desist order
84 11 issued by the securities and exchange commission or issued
84 12 under the securities, commodities, investment, franchise,
84 13 banking, finance, or insurance laws of a state.

84 14 m. The person has engaged in dishonest or unethical
84 15 practices in the securities, commodities, investment,
84 16 franchise, banking, finance, or insurance business within the
84 17 previous ten years.

84 18 n. The person is not qualified on the basis of factors
84 19 such as training, experience, and knowledge of the securities
84 20 business. However, in the case of an application by an agent
84 21 for a broker-dealer that is a member of a self-regulatory
84 22 organization or by an individual for registration as an
84 23 investment adviser representative, a denial order shall not be
84 24 based on this paragraph if the individual has successfully
84 25 completed all examinations required by subsection 5. The
84 26 administrator may require an applicant for registration under
84 27 section 502.402 or 502.404 who has not been registered in a
84 28 state within the two years preceding the filing of an
84 29 application in this state to successfully complete an
84 30 examination.

84 31 5. EXAMINATIONS. A rule adopted or order issued under
84 32 this chapter may require that an examination, including an
84 33 examination developed or approved by an organization of
84 34 securities regulators, be successfully completed by a class of
84 35 individuals or all individuals. An order issued under this
85 1 chapter may waive, in whole or in part, an examination as to
85 2 an individual and a rule adopted under this chapter may waive,
85 3 in whole or in part, an examination as to a class of
85 4 individuals if the administrator determines that the
85 5 examination is not necessary or appropriate in the public
85 6 interest and for the protection of investors.

85 7 6. SUMMARY PROCESS. The administrator may suspend or deny
85 8 an application summarily; restrict, condition, limit, or
85 9 suspend a registration; or censure, bar, or impose a civil
85 10 penalty on a registrant before final determination of an
85 11 administrative proceeding. Upon the issuance of an order, the
85 12 administrator shall promptly notify each person subject to the
85 13 order that the order has been issued, the reasons for the
85 14 action, and that within fifteen days after the receipt of a
85 15 request in a record from the person the matter will be
85 16 scheduled for a hearing. If a hearing is not requested and
85 17 none is ordered by the administrator within thirty days after
85 18 the date of service of the order, the order becomes final by
85 19 operation of law. If a hearing is requested or ordered, the
85 20 administrator, after notice of and opportunity for hearing to
85 21 each person subject to the order, may modify or vacate the
85 22 order or extend the order until final determination. Section
85 23 17A.18A is inapplicable to a summary order issued under this
85 24 subsection.

85 25 7. PROCEDURAL REQUIREMENTS. An order issued shall not be
85 26 issued under this section, except under subsection 6, without
85 27 all of the following:

- 85 28 a. Appropriate notice to the applicant or registrant.
- 85 29 b. Opportunity for hearing.
- 85 30 c. Findings of fact and conclusions of law in a record in
85 31 accordance with chapter 17A.

85 32 8. CONTROL PERSON LIABILITY. A person that controls,
85 33 directly or indirectly, a person not in compliance with this
85 34 section may be disciplined by order of the administrator under
85 35 subsections 1 through 3 to the same extent as the noncomplying
86 1 person, unless the controlling person did not know, and in the
86 2 exercise of reasonable care could not have known, of the
86 3 existence of conduct that is a ground for discipline under
86 4 this section.

86 5 9. LIMIT ON INVESTIGATION OR PROCEEDING. The
86 6 administrator shall not institute a proceeding under
86 7 subsection 1, 2, or 3 based solely on material facts actually
86 8 known by the administrator unless an investigation or the
86 9 proceeding is instituted within one year after the
86 10 administrator actually acquires knowledge of the material
86 11 facts.

86 12 ARTICLE 5

86 13 FRAUD AND LIABILITIES

86 14 Sec. 38. Section 502.501, Code 2003, is amended by
86 15 striking the section and inserting in lieu thereof the
86 16 following:

86 17 502.501 GENERAL FRAUD.

86 18 It is unlawful for a person, in connection with the offer,
86 19 sale, or purchase of a security, directly or indirectly:

86 20 1. To employ a device, scheme, or artifice to defraud;

86 21 2. To make an untrue statement of a material fact or to
86 22 omit to state a material fact necessary in order to make the
86 23 statements made, in light of the circumstances under which
86 24 they were made, not misleading; or

86 25 3. To engage in an act, practice, or course of business
86 26 that operates or would operate as a fraud or deceit upon
86 27 another person.

86 28 Sec. 39. NEW SECTION. 502.501A PROHIBITED TRANSACTIONS
86 29 OF BROKER-DEALERS AND AGENTS.

86 30 A broker-dealer or agent shall not effect a transaction in,
86 31 or induce or attempt to induce the purchase or sale of, any
86 32 security in this state by means of any manipulative,
86 33 deceptive, or other fraudulent scheme, device, or contrivance,
86 34 fictitious quotation, or in violation of this chapter. A
86 35 broker-dealer or agent shall not recommend to a customer the
87 1 purchase, sale, or exchange of a security without reasonable
87 2 grounds to believe that the transaction or recommendation is
87 3 suitable for the customer based upon reasonable inquiry
87 4 concerning the customer's investment objectives, financial
87 5 situation and needs, and other relevant information known by
87 6 the broker-dealer.

87 7 Sec. 40. Section 502.502, Code 2003, is amended by
87 8 striking the section and inserting in lieu thereof the
87 9 following:

87 10 502.502 PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE.

87 11 1. FRAUD IN PROVIDING INVESTMENT ADVICE. It is unlawful
87 12 for a person that advises others for compensation, either
87 13 directly or indirectly or through publications or writings, as
87 14 to the value of securities or the advisability of investing
87 15 in, purchasing, or selling securities or that, for
87 16 compensation and as part of a regular business, issues or
87 17 promulgates analyses or reports relating to securities to do
87 18 any of the following:

87 19 a. Employ a device, scheme, or artifice to defraud another
87 20 person.

87 21 b. Engage in an act, practice, or course of business that
87 22 operates or would operate as a fraud or deceit upon another
87 23 person.

87 24 2. RULES DEFINING FRAUD. A rule adopted under this
87 25 chapter may define an act, practice, or course of business of
87 26 an investment adviser or an investment adviser representative,
87 27 other than a supervised person of a federal covered investment
87 28 adviser, as fraudulent, deceptive, or manipulative, and
87 29 prescribe means reasonably designed to prevent investment
87 30 advisers and investment adviser representatives, other than
87 31 supervised persons of a federal covered investment adviser,
87 32 from engaging in acts, practices, and courses of business
87 33 defined as fraudulent, deceptive, or manipulative.

87 34 3. RULES SPECIFYING CONTENTS OF ADVISORY CONTRACT. A rule
87 35 adopted under this chapter may specify the contents of an
88 1 investment advisory contract entered into, extended, or
88 2 renewed by an investment adviser.

88 3 Sec. 41. Section 502.503, Code 2003, is amended by
88 4 striking the section and inserting in lieu thereof the
88 5 following:

88 6 502.503 EVIDENTIARY BURDEN.

88 7 1. CIVIL. In a civil action or administrative proceeding
88 8 under this chapter, a person claiming an exemption, exception,
88 9 preemption, or exclusion has the burden to prove the
88 10 applicability of the claim.

88 11 2. CRIMINAL. In a criminal proceeding under this chapter,
88 12 a person claiming an exemption, exception, preemption, or
88 13 exclusion has the burden of going forward with evidence of the
88 14 claim.

88 15 Sec. 42. Section 502.504, Code 2003, is amended by
88 16 striking the section and inserting in lieu thereof the
88 17 following:

88 18 502.504 FILING OF SALES AND ADVERTISING LITERATURE.

88 19 1. FILING REQUIREMENT. Except as otherwise provided in
88 20 subsection 2, a rule adopted or order issued under this
88 21 chapter may require the filing of a prospectus, pamphlet,
88 22 circular, form letter, advertisement, sales literature, or
88 23 other advertising record relating to a security or investment
88 24 advice, addressed or intended for distribution to prospective
88 25 investors, including clients or prospective clients of a
88 26 person registered or required to be registered as an
88 27 investment adviser under this chapter.

88 28 2. EXCLUDED COMMUNICATIONS. This section does not apply
88 29 to sales and advertising literature specified in subsection 1
88 30 which relates to a federal covered security, a federal covered
88 31 investment adviser, or a security or transaction exempted by
88 32 section 502.201, 502.202, or 502.203 except as required
88 33 pursuant to section 502.201, subsection 7.

88 34 2A. AUTHORITY TO PROHIBIT FALSE ADVERTISING. The
88 35 administrator may by rule or order prohibit the publication,
89 1 circulation, or use of any advertising deemed false or
89 2 misleading.

89 3 Sec. 43. Section 502.505, Code 2003, is amended by
89 4 striking the section and inserting in lieu thereof the
89 5 following:

89 6 502.505 MISLEADING FILINGS.

89 7 It is unlawful for a person to make or cause to be made, in
89 8 a record that is used in an action or proceeding or filed
89 9 under this chapter, a statement that, at the time and in the
89 10 light of the circumstances under which it is made, is false or
89 11 misleading in a material respect, or, in connection with the
89 12 statement, to omit to state a material fact necessary to make
89 13 the statement made, in the light of the circumstances under
89 14 which it was made, not false or misleading.

89 15 Sec. 44. Section 502.506, Code 2003, is amended by
89 16 striking the section and inserting in lieu thereof the
89 17 following:

89 18 502.506 MISREPRESENTATIONS CONCERNING REGISTRATION OR
89 19 EXEMPTION.

89 20 1. CERTAIN REPRESENTATIONS NOT ALLOWED. The filing of an
89 21 application for registration, a registration statement, a
89 22 notice filing under this chapter, the registration of a
89 23 person, the notice filing by a person, or the registration of
89 24 a security under this chapter does not constitute a finding by
89 25 the administrator that a record filed under this chapter is
89 26 true, complete, and not misleading. The filing or
89 27 registration or the availability of an exemption, exception,
89 28 preemption, or exclusion for a security or a transaction does
89 29 not mean that the administrator has passed upon the merits or
89 30 qualifications of, or recommended or given approval to, a
89 31 person, security, or transaction. It is unlawful to make, or
89 32 cause to be made, to a purchaser, customer, client, or
89 33 prospective customer or client a representation inconsistent
89 34 with this section.

89 35 1A. OFFICIAL ENDORSEMENT PROHIBITED. A state official or
90 1 employee of the state shall not use such person's name in an
90 2 official capacity in connection with the endorsement or
90 3 recommendation of the organization or the promotion of any
90 4 issuer or in the sale to the public of its securities, and no
90 5 one shall use the stationery of the state or of any official
90 6 thereof in connection with any such transaction.

90 7 Sec. 45. NEW SECTION. 502.506A MISSTATEMENTS IN
90 8 PUBLICITY PROHIBITED.

90 9 It is unlawful for any person to make or cause to be made,
90 10 in any public report or press release, or in other information
90 11 which is either made generally available to the public or used
90 12 in opposition to a tender offer, any statement of a material
90 13 fact relating to a target company or made in connection with a
90 14 takeover offer which is, at the time and in the light of the
90 15 circumstances under which it is made, false or misleading, if
90 16 it is reasonably foreseeable that such statement will induce
90 17 other persons to buy, sell, or hold securities of the target
90 18 company.

90 19 Sec. 46. Section 502.507, Code 2003, is amended by
90 20 striking the section and inserting in lieu thereof the
90 21 following:

90 22 502.507 QUALIFIED IMMUNITY.

90 23 A broker-dealer, agent, investment adviser, federal covered
90 24 investment adviser, or investment adviser representative is
90 25 not liable to another broker-dealer, agent, investment
90 26 adviser, federal covered investment adviser, or investment
90 27 adviser representative for defamation relating to a statement
90 28 that is contained in a record required by the administrator,
90 29 or designee of the administrator, the securities and exchange
90 30 commission, or a self-regulatory organization, unless the
90 31 person knew, or should have known at the time that the
90 32 statement was made, that it was false in a material respect or
90 33 the person acted in reckless disregard of the statement's
90 34 truth or falsity.

90 35 Sec. 47. NEW SECTION. 502.508 CRIMINAL PENALTIES.

91 1 1. CRIMINAL PENALTIES.

91 2 a. Except as provided in paragraph "b", a person who
91 3 willfully violates any provision of this chapter, or any rule

91 4 adopted or order issued under this chapter, is guilty of a
91 5 class "D" felony.

91 6 b. A person who willfully violates section 502.501 or
91 7 section 502.502, subsection 1, resulting in a loss of more
91 8 than ten thousand dollars is guilty of a class "C" felony.

91 9 2. CRIMINAL REFERENCE NOT REQUIRED. The attorney general
91 10 or the proper county, with or without a reference from the
91 11 administrator, may institute criminal proceedings under this
91 12 chapter.

91 13 3. NO LIMITATION ON OTHER CRIMINAL ENFORCEMENT. This
91 14 chapter does not limit the power of this state to punish a
91 15 person for conduct that constitutes a crime under other laws
91 16 of this state.

91 17 Sec. 48. NEW SECTION. 502.509 CIVIL LIABILITY.

91 18 1. SECURITIES LITIGATION UNIFORM STANDARDS ACT.

91 19 Enforcement of civil liability under this section is subject
91 20 to the Securities Litigation Uniform Standards Act of 1998.

91 21 2. LIABILITY OF SELLER TO PURCHASER. A person is liable
91 22 to the purchaser if the person sells a security in violation
91 23 of section 502.301 or, by means of an untrue statement of a
91 24 material fact or an omission to state a material fact
91 25 necessary in order to make the statement made, in light of the
91 26 circumstances under which it is made, not misleading, the
91 27 purchaser not knowing the untruth or omission and the seller
91 28 not sustaining the burden of proof that the seller did not
91 29 know and, in the exercise of reasonable care, could not have
91 30 known of the untruth or omission. An action under this
91 31 subsection is governed by the following:

91 32 a. The purchaser may maintain an action to recover the
91 33 consideration paid for the security, less the amount of any
91 34 income received on the security, and interest at the legal
91 35 rate from the date of the purchase, costs, and reasonable
92 1 attorney fees determined by the court, upon the tender of the
92 2 security, or for actual damages as provided in paragraph "c".

92 3 b. The tender referred to in paragraph "a" may be made any
92 4 time before entry of judgment. Tender requires only notice in
92 5 a record of ownership of the security and willingness to
92 6 exchange the security for the amount specified. A purchaser
92 7 that no longer owns the security may recover actual damages as
92 8 provided in paragraph "c".

92 9 c. Actual damages in an action arising under this
92 10 subsection are the amount that would be recoverable upon a
92 11 tender less the value of the security when the purchaser
92 12 disposed of it, and interest at the legal rate from the date
92 13 of the purchase, costs, and reasonable attorney fees
92 14 determined by the court.

92 15 3. LIABILITY OF PURCHASER TO SELLER. A person is liable
92 16 to the seller if the person buys a security by means of an
92 17 untrue statement of a material fact or omission to state a
92 18 material fact necessary in order to make the statement made,
92 19 in light of the circumstances under which it is made, not
92 20 misleading, the seller not knowing of the untruth or omission,
92 21 and the purchaser not sustaining the burden of proof that the
92 22 purchaser did not know, and in the exercise of reasonable
92 23 care, could not have known of the untruth or omission. An
92 24 action under this subsection is governed by all of the
92 25 following:

92 26 a. The seller may maintain an action to recover the
92 27 security, and any income received on the security, costs, and
92 28 reasonable attorney fees determined by the court, upon the
92 29 tender of the purchase price, or for actual damages as
92 30 provided in paragraph "c".

92 31 b. The tender referred to in paragraph "a" may be made any
92 32 time before entry of judgment. Tender requires only notice in
92 33 a record of the present ability to pay the amount tendered and
92 34 willingness to take delivery of the security for the amount
92 35 specified. If the purchaser no longer owns the security, the

93 1 seller may recover actual damages as provided in paragraph
93 2 "c".

93 3 c. Actual damages in an action arising under this
93 4 subsection are the difference between the price at which the
93 5 security was sold and the value the security would have had at
93 6 the time of the sale in the absence of the purchaser's conduct
93 7 causing liability, and interest at the legal rate from the
93 8 date of the sale of the security, costs, and reasonable
93 9 attorney fees determined by the court.

93 10 4. LIABILITY OF UNREGISTERED BROKER=DEALER AND AGENT. A
93 11 person acting as a broker=dealer or agent that sells or buys a
93 12 security in violation of section 502.401, subsection 1,
93 13 section 502.402, subsection 1, or section 502.506 is liable to
93 14 the customer. The customer, if a purchaser, may maintain an

93 15 action for recovery of actual damages as specified in
93 16 subsection 2, paragraphs "a" through "c", or, if a seller, for
93 17 a remedy as specified in subsection 3, paragraphs "a" through
93 18 "c".

93 19 5. LIABILITY OF UNREGISTERED INVESTMENT ADVISER AND
93 20 INVESTMENT ADVISER REPRESENTATIVE. A person acting as an
93 21 investment adviser or investment adviser representative that
93 22 provides investment advice for compensation in violation of
93 23 section 502.403, subsection 1, section 502.404, subsection 1,
93 24 or section 502.506 is liable to the client. The client may
93 25 maintain an action to recover the consideration paid for the
93 26 advice, interest at the legal rate from the date of payment,
93 27 costs, and reasonable attorney fees determined by the court
93 28 and taxed as court costs.

93 29 6. LIABILITY FOR INVESTMENT ADVICE. A person that
93 30 receives directly or indirectly any consideration for
93 31 providing investment advice to another person and that employs
93 32 a device, scheme, or artifice to defraud the other person or
93 33 engages in an act, practice, or course of business that
93 34 operates or would operate as a fraud or deceit on the other
93 35 person is liable to the other person. An action under this
94 1 subsection is governed by all of the following:

94 2 a. The person defrauded may maintain an action to recover
94 3 the consideration paid for the advice and the amount of any
94 4 actual damages caused by the fraudulent conduct, interest at
94 5 the legal rate from the date of the fraudulent conduct, costs,
94 6 and reasonable attorney fees determined by the court, less the
94 7 amount of any income received as a result of the fraudulent
94 8 conduct.

94 9 b. This subsection does not apply to a broker-dealer or
94 10 its agents if the investment advice provided is solely
94 11 incidental to transacting business as a broker-dealer and no
94 12 special compensation is received for the investment advice.

94 13 7. JOINT AND SEVERAL LIABILITY. The following persons are
94 14 liable jointly and severally with and to the same extent as
94 15 persons liable under subsections 2 through 6:

94 16 a. A person that directly or indirectly controls a person
94 17 liable under subsections 2 through 6, unless the controlling
94 18 person sustains the burden of proof that the person did not
94 19 know, and in the exercise of reasonable care could not have
94 20 known, of the existence of conduct by reason of which the
94 21 liability is alleged to exist.

94 22 b. An individual who is a managing partner, executive
94 23 officer, or director of a person liable under subsections 2
94 24 through 6, including an individual having a similar status or
94 25 performing similar functions, unless the individual sustains
94 26 the burden of proof that the individual did not know and, in
94 27 the exercise of reasonable care could not have known, of the
94 28 existence of conduct by reason of which the liability is
94 29 alleged to exist.

94 30 c. An individual who is an employee of or associated with
94 31 a person liable under subsections 2 through 6 or a person,
94 32 whether an employee of such person or otherwise, who
94 33 materially aids in the act or transaction constituting the
94 34 violation, and who materially aids the conduct giving rise to
94 35 the liability, unless the individual sustains the burden of
95 1 proof that the individual did not know and, in the exercise of
95 2 reasonable care could not have known, of the existence of
95 3 conduct by reason of which the liability is alleged to exist.

95 4 d. A person that is a broker-dealer, agent, investment
95 5 adviser, or investment adviser representative that materially
95 6 aids the conduct giving rise to the liability under
95 7 subsections 2 through 6, unless the person sustains the burden
95 8 of proof that the person did not know and, in the exercise of
95 9 reasonable care could not have known, of the existence of
95 10 conduct by reason of which liability is alleged to exist.

95 11 8. RIGHT OF CONTRIBUTION. A person liable under this
95 12 section has a right of contribution as in cases of contract
95 13 against any other person liable under this section for the
95 14 same conduct.

95 15 9. SURVIVAL OF CAUSE OF ACTION. A cause of action under
95 16 this section survives the death of an individual who might
95 17 have been a plaintiff or defendant.

95 18 10. STATUTE OF LIMITATIONS. A person shall not obtain
95 19 relief under any of the following:

95 20 a. Under subsection 2 for violation of section 502.301, or
95 21 under subsection 4 or 5, unless the action is instituted
95 22 within one year after the violation occurred.

95 23 b. Under subsection 2, other than for violation of section
95 24 502.301, or under subsection 3 or 6, unless the action is
95 25 instituted within the earlier of two years after discovery of

95 26 the facts constituting the violation or five years after the
95 27 violation.

95 28 11. NO ENFORCEMENT OF VIOLATIVE CONTRACT. A person that
95 29 has made, or has engaged in the performance of, a contract in
95 30 violation of this chapter or a rule adopted or order issued
95 31 under this chapter, or that has acquired a purported right
95 32 under the contract with knowledge of conduct by reason of
95 33 which its making or performance was in violation of this
95 34 chapter, shall not base an action on the contract.

95 35 12. NO CONTRACTUAL WAIVER. A condition, stipulation, or
96 1 provision binding a person purchasing or selling a security or
96 2 receiving investment advice to waive compliance with this
96 3 chapter or a rule adopted or order issued under this chapter
96 4 is void.

96 5 13. SURVIVAL OF OTHER RIGHTS OR REMEDIES. The rights and
96 6 remedies provided by this chapter are in addition to any other
96 7 rights or remedies that may exist, but this chapter does not
96 8 create a cause of action not specified in this section or
96 9 section 502.411, subsection 5.

96 10 13A. INFORMATIONAL FILING WITH THE ADMINISTRATOR. A copy
96 11 of any suit or arbitration action filed under this section
96 12 shall be served upon the administrator within twenty days of
96 13 the filing in the form and manner prescribed by the
96 14 administrator by rule or order, provided that all of the
96 15 following apply:

96 16 a. The failure to comply with this provision shall not
96 17 invalidate the action which is the subject of the suit.

96 18 b. The suit or arbitration action has not been filed in a
96 19 record with the central registration depository or the
96 20 investment adviser registration depository.

96 21 13B. LIABILITY FOR TAKEOVER VIOLATIONS. Any person who
96 22 violates section 502.321B shall be liable to the person
96 23 selling the security to such violator, which seller may sue
96 24 either at law or in equity to recover the security, costs, and
96 25 reasonable attorney fees, plus any income or distributions, in
96 26 cash or in kind, received by the purchaser thereon, upon
96 27 tender of the consideration received, or for damages if the
96 28 purchaser no longer owns the security. Damages shall be the
96 29 excess of the value of the security when the purchaser
96 30 disposed of it, plus interest at the legal rate from the date
96 31 of disposition, over the consideration paid for the security.
96 32 Tender requires only notice of willingness to pay the amount
96 33 specified in exchange for the security. Any notice may be
96 34 given by service as in civil actions or by certified mail to
96 35 the last known address of the person liable.

97 1 In addition to other remedies provided in this chapter, in
97 2 a proceeding alleging a violation of article 3A, the court may
97 3 provide that all shares acquired from a resident of this state
97 4 in violation of any provision of this chapter or rule or order
97 5 issued pursuant to this chapter be denied voting rights for
97 6 one year after acquisition, that the shares be nontransferable
97 7 on the books of the target company, or that during this one=
97 8 year period the target company have the option to call the
97 9 shares for redemption either at the price at which the shares
97 10 were acquired or at book value per share as of the last day of
97 11 the fiscal quarter ended prior to the date of the call for
97 12 redemption, which redemption shall occur on the date set in
97 13 the call notice but not later than sixty days after the call
97 14 notice is given.

97 15 Sec. 49. NEW SECTION. 502.510 RECISION OFFERS.

97 16 A purchaser, seller, or recipient of investment advice may
97 17 not maintain an action under section 502.509 if all of the
97 18 following apply:

97 19 1. The purchaser, seller, or recipient of investment
97 20 advice receives in a record, before the action is instituted,
97 21 any of the following:

97 22 a. An offer stating the respect in which liability under
97 23 section 502.509 may have arisen and fairly advising the
97 24 purchaser, seller, or recipient of investment advice of that
97 25 person's rights in connection with the offer, and any
97 26 financial or other information necessary to correct all
97 27 material misrepresentations or omissions in the information
97 28 that was required by this chapter to be furnished to that
97 29 person at the time of the purchase, sale, or investment
97 30 advice.

97 31 b. If the basis for relief under this section may have
97 32 been a violation of section 502.509, subsection 2, an offer to
97 33 repurchase the security for cash, payable on delivery of the
97 34 security, equal to the consideration paid, and interest at the
97 35 legal rate from the date of the purchase, less the amount of
98 1 any income received on the security; or, if the purchaser no

98 2 longer owns the security, an offer to pay the purchaser upon
98 3 acceptance of the offer damages in an amount that would be
98 4 recoverable upon a tender, less the value of the security when
98 5 the purchaser disposed of it, and interest at the legal rate
98 6 from the date of the purchase in cash equal to the damages
98 7 computed in the manner provided in this subsection.
98 8 c. If the basis for relief under this section may have
98 9 been a violation of section 502.509, subsection 3, an offer to
98 10 tender the security, on payment by the seller of an amount
98 11 equal to the purchase price paid, less income received on the
98 12 security by the purchaser and interest at the legal rate from
98 13 the date of the sale; or if the purchaser no longer owns the
98 14 security, an offer to pay the seller upon acceptance of the
98 15 offer, in cash, damages in the amount of the difference
98 16 between the price at which the security was purchased and the
98 17 value the security would have had at the time of the purchase
98 18 in the absence of the purchaser's conduct that may have caused
98 19 liability and interest at the legal rate of interest from the
98 20 date of the sale.
98 21 d. If the basis for relief under this section may have
98 22 been a violation of section 502.509, subsection 4; and if the
98 23 customer is a purchaser, an offer to pay as specified in
98 24 paragraph "b"; or, if the customer is a seller, an offer to
98 25 tender or to pay as specified in paragraph "c".
98 26 e. If the basis for relief under this section may have
98 27 been a violation of section 502.509, subsection 3, an offer to
98 28 reimburse in cash the consideration paid for the advice and
98 29 interest at the legal rate from the date of payment.
98 30 f. If the basis for relief under this section may have
98 31 been a violation of section 502.509, subsection 6, an offer to
98 32 reimburse in cash the consideration paid for the advice, the
98 33 amount of any actual damages that may have been caused by the
98 34 conduct, and interest at the legal rate from the date of the
98 35 violation causing the loss.

99 1 2. The offer under subsection 1 states that it must be
99 2 accepted by the purchaser, seller, or recipient of investment
99 3 advice within thirty days after the date of its receipt by the
99 4 purchaser, seller, or recipient of investment advice or any
99 5 shorter period, of not less than three days, that the
99 6 administrator, by order, specifies.

99 7 3. The offeror has the present ability to pay the amount
99 8 offered or to tender the security under subsection 1.

99 9 4. The offer under subsection 1 is delivered to the
99 10 purchaser, seller, or recipient of investment advice, or sent
99 11 in a manner that ensures receipt by the purchaser, seller, or
99 12 recipient of investment advice.

99 13 5. The purchaser, seller, or recipient of investment
99 14 advice that accepts the offer under subsection 1 in a record
99 15 within the period specified under subsection 2 is paid in
99 16 accordance with the terms of the offer.

99 17 If the basis for relief under this section alleges a
99 18 violation of section 502.509 which employed a device, scheme,
99 19 or artifice to defraud, made an untrue statement of a material
99 20 fact necessary in order to make the statement made, in light
99 21 of the circumstances under which it was made, not misleading,
99 22 or engaged in an act, practice, or course of business that
99 23 operated or would operate as a fraud or deceit on another
99 24 person, the offer is filed with the administrator ten business
99 25 days before the offering and conforms in form and content with
99 26 a rule prescribed by the administrator.

99 27 ARTICLE 6

99 28 ADMINISTRATION AND JUDICIAL REVIEW

99 29 Sec. 50. Section 502.601, Code Supplement 2003, is amended
99 30 by striking the section and inserting in lieu thereof the
99 31 following:

99 32 502.601 ADMINISTRATION.

99 33 1. ADMINISTRATION. This chapter shall be administered by
99 34 the commissioner of insurance of this state. The
99 35 administrator shall appoint a deputy administrator who shall
100 1 be exempt from the merit system provisions of chapter 8A,
100 2 subchapter IV. The deputy administrator is the principal
100 3 operations officer of the securities bureau of the insurance
100 4 division of the department of commerce. The deputy
100 5 administrator is responsible to the administrator for the
100 6 routine administration of this chapter and the management of
100 7 the securities bureau. In the absence of the administrator,
100 8 whether because of vacancy in the office, by reason of
100 9 absence, physical disability, or other cause, the deputy
100 10 administrator shall be the acting administrator and shall, for
100 11 that period, have and exercise the authority conferred upon
100 12 the administrator. The administrator may by order delegate to

100 13 the deputy administrator any or all of the functions assigned
100 14 to the administrator under this chapter. The administrator
100 15 shall employ officers, attorneys, accountants, and other
100 16 employees as needed for the administration of the chapter.

100 17 2. UNLAWFUL USE OF RECORDS OR INFORMATION. It is unlawful
100 18 for the administrator or an officer, employee, or designee of
100 19 the administrator to use for personal benefit or the benefit
100 20 of others records or other information obtained by or filed
100 21 with the administrator that are not public under section
100 22 502.607, subsection 2. This chapter does not authorize the
100 23 administrator or an officer, employee, or designee of the
100 24 administrator to disclose the record or information, except in
100 25 accordance with section 502.602, section 502.607, subsection
100 26 3, or section 502.608.

100 27 3. NO PRIVILEGE OR EXEMPTION CREATED OR DIMINISHED. This
100 28 chapter does not create or diminish a privilege or exemption
100 29 that exists at common law, by statute or rule, or otherwise.

100 30 4. INVESTOR EDUCATION. The administrator may develop and
100 31 implement investor education initiatives to inform the public
100 32 about investing in securities, with particular emphasis on the
100 33 prevention and detection of securities fraud. In developing
100 34 and implementing these initiatives, the administrator may
100 35 collaborate with public and nonprofit organizations with an
101 1 interest in investor education. The administrator may accept
101 2 a grant or donation from a person that is not affiliated with
101 3 the securities industry or from a nonprofit organization,
101 4 regardless of whether the organization is affiliated with the
101 5 securities industry, to develop and implement investor
101 6 education initiatives. This subsection does not authorize the
101 7 administrator to require participation or monetary
101 8 contributions of a registrant in an investor education
101 9 program.

101 10 5. THE SECURITIES INVESTOR EDUCATION AND TRAINING FUND. A
101 11 securities investor education and training fund is created in
101 12 the state treasury under the control of the administrator to
101 13 provide moneys for the purposes specified in subsection 4.
101 14 All moneys received by the state by reason of civil penalties
101 15 pursuant to this chapter shall be deposited in the securities
101 16 investor education and training fund. Notwithstanding section
101 17 12C.7, interest or earnings on moneys deposited into the fund
101 18 shall be credited to the fund. Notwithstanding section 8.33,
101 19 unencumbered or unobligated moneys remaining in the fund shall
101 20 not revert but shall be available for expenditure for the
101 21 following fiscal year. However, if, on June 30, unencumbered
101 22 or unobligated moneys remaining in the fund exceed two hundred
101 23 thousand dollars, moneys in excess of that amount shall revert
101 24 to the general fund of the state in the same manner as
101 25 provided in section 8.33.

101 26 Sec. 51. Section 502.602, Code 2003, is amended by
101 27 striking the section and inserting in lieu thereof the
101 28 following:

101 29 502.602 INVESTIGATIONS AND SUBPOENAS.

101 30 1. AUTHORITY TO INVESTIGATE. The administrator may do any
101 31 of the following:

101 32 a. Conduct public or private investigations within or
101 33 outside of this state which the administrator considers
101 34 necessary or appropriate to determine whether a person has
101 35 violated, is violating, or is about to violate this chapter or
102 1 a rule adopted or order issued under this chapter, or to aid
102 2 in the enforcement of this chapter or in the adoption of rules
102 3 and forms under this chapter.

102 4 b. Require or permit a person to testify, file a
102 5 statement, or produce a record, under oath or otherwise as the
102 6 administrator determines, as to all the facts and
102 7 circumstances concerning a matter to be investigated or about
102 8 which an action or proceeding is to be instituted.

102 9 c. Notwithstanding section 502.607, subsection 2, publish
102 10 a record concerning an action, proceeding, or an investigation
102 11 under, or a violation of, this chapter or a rule adopted or
102 12 order issued under this chapter if the administrator
102 13 determines it is necessary or appropriate in the public
102 14 interest and for the protection of investors.

102 15 2. ADMINISTRATOR POWERS TO INVESTIGATE. For the purpose
102 16 of an investigation under this chapter, the administrator or
102 17 the administrator's designated officer may administer oaths
102 18 and affirmations, subpoena witnesses, seek compulsion of
102 19 attendance, take evidence, require the filing of statements,
102 20 and require the production of any records that the
102 21 administrator considers relevant or material to the
102 22 investigation, all of which may be enforced pursuant to
102 23 chapter 17A.

102 24 3. PROCEDURE AND REMEDIES FOR NONCOMPLIANCE. If a person
102 25 does not appear or refuses to testify, file a statement,
102 26 produce records, or otherwise does not obey a subpoena as
102 27 required by the administrator under this chapter, the
102 28 administrator may apply to district court or a court of
102 29 another state to enforce compliance. The court may do any of
102 30 the following:

- 102 31 a. Hold the person in contempt.
- 102 32 b. Order the person to appear before the administrator.
- 102 33 c. Order the person to testify about the matter under
102 34 investigation or in question.
- 102 35 d. Order the production of records.
- 103 1 e. Grant injunctive relief, including restricting or
103 2 prohibiting the offer or sale of securities or the providing
103 3 of investment advice.
- 103 4 f. Impose a civil penalty of an amount not to exceed a
103 5 maximum of five thousand dollars for a single violation or
103 6 five hundred thousand dollars for more than one violation.
- 103 7 g. Grant any other necessary or appropriate relief.

103 8 4. APPLICATION FOR RELIEF. This section does not preclude
103 9 a person from applying to district court or a court of another
103 10 state for relief from a request to appear, testify, file a
103 11 statement, produce records, or obey a subpoena.

103 12 5. USE IMMUNITY PROCEDURE. An individual is not excused
103 13 from attending, testifying, filing a statement, producing a
103 14 record or other evidence, or obeying a subpoena of the
103 15 administrator under this chapter or in an action or proceeding
103 16 instituted by the administrator under this chapter on the
103 17 ground that the required testimony, statement, record, or
103 18 other evidence, directly or indirectly, may tend to
103 19 incriminate the individual or subject the individual to a
103 20 criminal fine, penalty, or forfeiture. If the individual
103 21 refuses to testify, file a statement, or produce a record or
103 22 other evidence on the basis of the individual's privilege
103 23 against self-incrimination, the administrator may apply to the
103 24 district court to compel the testimony, the filing of the
103 25 statement, the production of the record, or the giving of
103 26 other evidence. The testimony, record, or other evidence
103 27 compelled under such an order shall not be used, directly or
103 28 indirectly, against the individual in a criminal case, except
103 29 in a prosecution for perjury or contempt or otherwise failing
103 30 to comply with the order.

103 31 6. ASSISTANCE TO SECURITIES REGULATOR OF ANOTHER
103 32 JURISDICTION. At the request of the securities regulator of
103 33 another state or a foreign jurisdiction, the administrator may
103 34 provide assistance if the requesting regulator states that it
103 35 is conducting an investigation to determine whether a person
104 1 has violated, is violating, or is about to violate a law or
104 2 rule of the other state or foreign jurisdiction relating to
104 3 securities matters that the requesting regulator administers
104 4 or enforces. The administrator may provide the assistance by
104 5 using the authority to investigate and the powers conferred by
104 6 this section as the administrator determines is necessary or
104 7 appropriate. The assistance may be provided without regard to
104 8 whether the conduct described in the request would also
104 9 constitute a violation of this chapter or other law of this
104 10 state if occurring in this state. In deciding whether to
104 11 provide the assistance, the administrator may consider whether
104 12 the requesting regulator is permitted and has agreed to
104 13 provide assistance reciprocally within its state or foreign
104 14 jurisdiction to the administrator on securities matters when
104 15 requested, whether compliance with the request would violate
104 16 or prejudice the public policy of this state, and the
104 17 availability of resources and employees of the administrator
104 18 to carry out the request for assistance.

104 19 Sec. 52. Section 502.603, Code 2003, is amended by
104 20 striking the section and inserting in lieu thereof the
104 21 following:

104 22 502.603 CIVIL ENFORCEMENT.

104 23 1. CIVIL ACTION INSTITUTED BY ADMINISTRATOR. If the
104 24 administrator believes that a person has engaged, is engaging,
104 25 or is about to engage in an act, practice, or course of
104 26 business constituting a violation of this chapter or a rule
104 27 adopted or order issued under this chapter or that a person
104 28 has, is, or is about to engage in an act, practice, or course
104 29 of business that materially aids a violation of this chapter
104 30 or a rule adopted or order issued under this chapter, the
104 31 administrator may maintain an action in the district court to
104 32 enjoin the act, practice, or course of business and to enforce
104 33 compliance with this chapter or a rule adopted or order issued
104 34 under this chapter.

104 35 2. RELIEF AVAILABLE. In an action under this section and
105 1 on a proper showing, the court may do any of the following:
105 2 a. Issue a permanent or temporary injunction, restraining
105 3 order, or declaratory judgment.
105 4 b. Order other appropriate or ancillary relief, which may
105 5 include any of the following:
105 6 (1) Ordering an asset freeze, accounting, writ of
105 7 attachment, writ of general or specific execution, and
105 8 appointment of a receiver or conservator, that may be the
105 9 administrator, for the defendant or the defendant's assets.
105 10 (2) Ordering the administrator to take charge and control
105 11 of a defendant's property, including investment accounts and
105 12 accounts in a depository institution, rents, and profits; to
105 13 collect debts; and to acquire and dispose of property.
105 14 (3) Imposing a civil penalty not to exceed a maximum of
105 15 five thousand dollars for a single violation or five hundred
105 16 thousand dollars for more than one violation; an order of
105 17 recision, restitution, or disgorgement directed to a person
105 18 that has engaged in an act, practice, or course of business
105 19 constituting a violation of this chapter or the predecessor
105 20 chapter or a rule adopted or order issued under this chapter
105 21 or the predecessor chapter.
105 22 (4) Ordering the payment of prejudgment and postjudgment
105 23 interest.
105 24 c. Order such other relief as the court considers
105 25 appropriate.
105 26 3. NO BOND REQUIRED. The administrator shall not be
105 27 required to post a bond in an action or proceeding under this
105 28 chapter.

105 29 Sec. 53. Section 502.604, Code 2003, is amended by
105 30 striking the section and inserting in lieu thereof the
105 31 following:

105 32 502.604 ADMINISTRATIVE ENFORCEMENT.

105 33 1. ISSUANCE OF AN ORDER OR NOTICE. If the administrator
105 34 determines that a person has engaged, is engaging, or is about
105 35 to engage in an act, practice, or course of business
106 1 constituting a violation of this chapter or a rule adopted or
106 2 order issued under this chapter or that a person has
106 3 materially aided, is materially aiding, or is about to
106 4 materially aid an act, practice, or course of business
106 5 constituting a violation of this chapter or a rule adopted or
106 6 order issued under this chapter, the administrator may do any
106 7 of the following:

106 8 a. Issue an order directing the person to cease and desist
106 9 from engaging in the act, practice, or course of business or
106 10 to take other action necessary or appropriate to comply with
106 11 this chapter.

106 12 b. Issue an order denying, suspending, revoking, or
106 13 conditioning the exemptions for a broker-dealer under section
106 14 502.401, subsection 2, paragraph "a", subparagraph (4) or (6),
106 15 or an investment adviser under section 502.403, subsection 2,
106 16 paragraph "a", subparagraph (3).

106 17 c. Issue an order under section 502.204.

106 18 2. SUMMARY PROCESS. An order under subsection 1 is
106 19 effective on the date of issuance. Upon issuance of the
106 20 order, the administrator shall promptly serve each person
106 21 subject to the order with a copy of the order and a notice
106 22 that the order has been entered. The order must include a
106 23 statement of any civil penalty or costs of investigation the
106 24 administrator will seek, a statement of the reasons for the
106 25 order, and notice that, within fifteen days after receipt of a
106 26 request in a record from the person, the matter will be
106 27 scheduled for a hearing. If a person subject to the order
106 28 does not request a hearing and none is ordered by the
106 29 administrator within thirty days after the date of service of
106 30 the order, the order, including the imposition of a civil
106 31 penalty or requirement for payment of costs of investigation
106 32 sought in the order, becomes final as to that person by
106 33 operation of law. If a hearing is requested or ordered, the
106 34 administrator, after notice of and opportunity for hearing to
106 35 each person subject to the order, may modify or vacate the
107 1 order or extend it until final determination.

107 2 3. PROCEDURE FOR FINAL ORDER. If a hearing is requested
107 3 or ordered pursuant to subsection 2, a hearing must be held
107 4 pursuant to chapter 17A. A final order shall not be issued
107 5 unless the administrator makes findings of fact and
107 6 conclusions of law in a record in accordance with chapter 17A.
107 7 The final order may make final, vacate, or modify the order
107 8 issued under subsection 1.

107 9 4. CIVIL PENALTY. In a final order under subsection 3,
107 10 the administrator may impose a civil penalty up to an amount

107 11 not to exceed a maximum of five thousand dollars for a single
107 12 violation or five hundred thousand dollars for more than one
107 13 violation.

107 14 5. COSTS. In a final order, the administrator may charge
107 15 the actual cost of an investigation or proceeding for a
107 16 violation of this chapter or a rule adopted or order issued
107 17 under this chapter.

107 18 6. FILING OF CERTIFIED FINAL ORDER WITH COURT == EFFECT OF
107 19 FILING. If a petition for judicial review of a final order is
107 20 not filed in accordance with section 502.609, the
107 21 administrator may file a certified copy of the final order
107 22 with the clerk of a court of competent jurisdiction. The
107 23 order so filed has the same effect as a judgment of the court
107 24 and may be recorded, enforced, or satisfied in the same manner
107 25 as a judgment of the court.

107 26 7. ENFORCEMENT BY COURT == FURTHER CIVIL PENALTY. If a
107 27 person does not comply with an order under this section, the
107 28 administrator may petition a court of competent jurisdiction
107 29 to enforce the order. The court shall not require the
107 30 administrator to post a bond in an action or proceeding under
107 31 this section. If the court finds, after service and
107 32 opportunity for hearing, that the person was not in compliance
107 33 with the order, the court may adjudge the person in civil
107 34 contempt of the order. The court may impose a further civil
107 35 penalty against the person for contempt in an amount not less
108 1 than three thousand dollars but not greater than ten thousand
108 2 dollars for each violation and may grant any other relief the
108 3 court determines is just and proper in the circumstances.

108 4 Sec. 54. Section 502.604A, Code 2003, is amended by
108 5 striking the section and inserting in lieu thereof the
108 6 following:

108 7 502.604A LIMITED LAW ENFORCEMENT AUTHORITY.

108 8 The administrator or the administrator's designee, when
108 9 carrying out the provisions of section 502.603 or 502.604, may
108 10 develop, share, and receive information related to any law
108 11 enforcement purpose, including any criminal investigation.
108 12 The administrator or designee shall not have the authority to
108 13 issue criminal subpoenas or make arrests. The administrator
108 14 or designee shall not be considered a peace officer, including
108 15 as provided in chapter 801.

108 16 Sec. 55. Section 502.605, Code 2003, is amended by
108 17 striking the section and inserting in lieu thereof the
108 18 following:

108 19 502.605 RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS, AND
108 20 HEARINGS.

108 21 1. ISSUANCE AND ADOPTION OF FORMS, ORDERS, AND RULES.

108 22 Pursuant to chapter 17A, the administrator may do any of the
108 23 following:

108 24 a. Issue forms and orders and, after notice and comment,
108 25 may adopt and amend rules necessary or appropriate to carry
108 26 out this chapter and may repeal rules, including rules and
108 27 forms governing registration statements, applications, notice
108 28 filings, reports, and other records.

108 29 b. Define terms, whether or not used in this chapter, but
108 30 those definitions shall not be inconsistent with this chapter.

108 31 c. Classify securities, persons, and transactions and
108 32 adopt different requirements for different classes.

108 33 2. FINDINGS AND COOPERATION. Under this chapter, a rule
108 34 or form shall not be adopted or amended, or an order issued or
108 35 amended, unless the administrator finds that the rule, form,
109 1 order, or amendment is necessary or appropriate in the public
109 2 interest or for the protection of investors and is consistent
109 3 with the purposes intended by this chapter. In adopting,
109 4 amending, and repealing rules and forms, section 502.608
109 5 applies in order to achieve uniformity among the states and
109 6 coordination with federal laws in the form and content of
109 7 registration statements, applications, reports, and other
109 8 records, including the adoption of uniform rules, forms, and
109 9 procedures.

109 10 3. FINANCIAL STATEMENTS. Subject to section 15(h) of the
109 11 Securities Exchange Act and section 222 of the Investment
109 12 Advisers Act of 1940, the administrator may require that a
109 13 financial statement filed under this chapter be prepared in
109 14 accordance with generally accepted accounting principles in
109 15 the United States and comply with other requirements specified
109 16 by rule adopted or order issued under this chapter. A rule
109 17 adopted or order issued under this chapter may establish any
109 18 of the following:

109 19 a. Subject to section 15(h) of the Securities Exchange Act
109 20 and section 222 of the Investment Advisers Act of 1940, the
109 21 form and content of financial statements required under this

109 22 chapter.
109 23 b. Whether unconsolidated financial statements must be
109 24 filed.
109 25 c. Whether required financial statements must be audited
109 26 by an independent certified public accountant.
109 27 4. INTERPRETATIVE OPINIONS. The administrator may provide
109 28 interpretative opinions or issue determinations that the
109 29 administrator will not institute a proceeding or an action
109 30 under this chapter against a specified person for engaging in
109 31 a specified act, practice, or course of business if the
109 32 determination is consistent with this chapter. A rule adopted
109 33 or order issued under this chapter may establish a reasonable
109 34 charge for interpretative opinions or determinations that the
109 35 administrator will not institute an action or a proceeding
110 1 under this chapter.
110 2 5. EFFECT OF COMPLIANCE. A penalty under this chapter
110 3 shall not be imposed for, and liability does not arise from,
110 4 conduct that is engaged in or omitted in good faith believing
110 5 it conforms to a rule, form, or order of the administrator
110 6 under this chapter.
110 7 6. PRESUMPTION FOR PUBLIC HEARINGS. A hearing in an
110 8 administrative proceeding under this chapter must be conducted
110 9 in public unless the administrator for good cause consistent
110 10 with this chapter determines that the hearing will not be so
110 11 conducted.
110 12 Sec. 56. Section 502.606, Code 2003, is amended by
110 13 striking the section and inserting in lieu thereof the
110 14 following:
110 15 502.606 ADMINISTRATIVE FILES AND OPINIONS.
110 16 1. PUBLIC REGISTER OF FILINGS. The administrator shall
110 17 maintain, or designate a person to maintain, a register of
110 18 applications for registration of securities; registration
110 19 statements; notice filings; applications for registration of
110 20 broker-dealers, agents, investment advisers, and investment
110 21 adviser representatives; notice filings by federal covered
110 22 investment advisers that are or have been effective under this
110 23 chapter or the predecessor chapter; notices of claims of
110 24 exemption from registration or notice filing requirements
110 25 contained in a record; orders issued under this chapter or the
110 26 predecessor chapter; and interpretative opinions or no action
110 27 determinations issued under this chapter.
110 28 2. PUBLIC AVAILABILITY. The administrator shall make all
110 29 rules, forms, interpretative opinions, and orders available to
110 30 the public.
110 31 3. COPIES OF PUBLIC RECORDS. The administrator shall
110 32 furnish a copy of a record that is a public record or a
110 33 certification that the public record does not exist to a
110 34 person that so requests. A rule adopted under this chapter
110 35 may establish a reasonable charge for furnishing the record or
111 1 certification. A copy of the record certified or a
111 2 certificate by the administrator of a record's nonexistence is
111 3 prima facie evidence of a record or its nonexistence.
111 4 Sec. 57. Section 502.607, Code 2003, is amended by
111 5 striking the section and inserting in lieu thereof the
111 6 following:
111 7 502.607 PUBLIC RECORDS == CONFIDENTIALITY.
111 8 1. PRESUMPTION OF PUBLIC RECORDS. Except as otherwise
111 9 provided in subsection 2, records obtained by the
111 10 administrator or filed under this chapter, including a record
111 11 contained in or filed with a registration statement,
111 12 application, notice filing, or report, are public records and
111 13 are available for public examination.
111 14 2. NONPUBLIC RECORDS. Notwithstanding chapter 22, the
111 15 following records are not public records and are not available
111 16 for public examination under subsection 1:
111 17 a. A record obtained by the administrator in connection
111 18 with an audit or inspection under section 502.411, subsection
111 19 4, or an investigation under section 502.602.
111 20 b. A part of a record filed in connection with a
111 21 registration statement under sections 502.301 and 502.303
111 22 through 502.305 or a record under section 502.411, subsection
111 23 4, that contains trade secrets or confidential information if
111 24 the person filing the registration statement or report has
111 25 asserted a claim of confidentiality or privilege that is
111 26 authorized by law.
111 27 c. A record that is not required to be provided to the
111 28 administrator or filed under this chapter and is provided to
111 29 the administrator only on the condition that the record will
111 30 not be subject to public examination or disclosure.
111 31 d. A nonpublic record received from a person specified in
111 32 section 502.608, subsection 1.

111 33 e. Any social security number, residential address unless
111 34 used as a business address, and residential telephone number
111 35 unless used as a business telephone number, contained in a
112 1 record that is filed.

112 2 f. A record obtained by the administrator through a
112 3 designee that the administrator determines by rule or order
112 4 has been appropriately expunged from its own records by that
112 5 designee, if the administrator finds that such expungement is
112 6 in the public interest and does not impair investor
112 7 protection.

112 8 3. ADMINISTRATOR DISCRETION TO DISCLOSE. If disclosure is
112 9 for the purpose of a civil, administrative, or criminal
112 10 investigation, action, or proceeding or to a person specified
112 11 in section 502.608, subsection 1, the administrator may
112 12 disclose a record obtained in connection with an audit or
112 13 inspection under section 502.411, subsection 4, or a record
112 14 obtained in connection with an investigation under section
112 15 502.602.

112 16 Sec. 58. Section 502.608, Code 2003, is amended by
112 17 striking the section and inserting in lieu thereof following:
112 18 502.608 UNIFORMITY AND COOPERATION WITH OTHER AGENCIES.

112 19 1. OBJECTIVE OF UNIFORMITY. The administrator shall, in
112 20 its discretion, cooperate, coordinate, consult, and, subject
112 21 to section 502.607, share records and information with the
112 22 securities regulator of another state, Canada, a Canadian
112 23 province or territory, a foreign jurisdiction, the securities
112 24 and exchange commission, the United States department of
112 25 justice, the commodity futures trading commission, the federal
112 26 trade commission, the securities investor protection
112 27 corporation, a self-regulatory organization, a national or
112 28 international organization of securities regulators, a federal
112 29 or state banking and insurance regulator, and a governmental
112 30 law enforcement agency to effectuate greater uniformity in
112 31 securities matters among the federal government, self=
112 32 regulatory organizations, states, and foreign governments.

112 33 2. POLICIES TO CONSIDER. In cooperating, coordinating,
112 34 consulting, and sharing records and information under this
112 35 section and in acting by rule, order, or waiver under this
113 1 chapter, the administrator shall, in its discretion, take into
113 2 consideration in carrying out the public interest, all of the
113 3 following general policies:

113 4 a. Maximizing effectiveness of regulation for the
113 5 protection of investors.

113 6 b. Maximizing uniformity in federal and state regulatory
113 7 standards.

113 8 c. Minimizing burdens on the business of capital
113 9 formation, without adversely affecting essentials of investor
113 10 protection.

113 11 3. SUBJECTS FOR COOPERATION. The cooperation,
113 12 coordination, consultation, and sharing of records and
113 13 information authorized by this section includes all of the
113 14 following:

113 15 a. Establishing or employing one or more designees as a
113 16 central depository for registration and notice filings under
113 17 this chapter and for records required or allowed to be
113 18 maintained under this chapter.

113 19 b. Developing and maintaining uniform forms.

113 20 c. Conducting a joint examination or investigation.

113 21 d. Holding a joint administrative hearing.

113 22 e. Instituting and prosecuting a joint civil or
113 23 administrative proceeding.

113 24 f. Sharing and exchanging personnel.

113 25 g. Coordinating registrations under sections 502.301 and
113 26 502.401 through 502.404 and exemptions under section 502.203.

113 27 h. Sharing and exchanging records, subject to section
113 28 502.607.

113 29 i. Formulating rules, statements of policy, guidelines,
113 30 forms, and interpretative opinions and releases.

113 31 j. Formulating common systems and procedures.

113 32 k. Notifying the public of proposed rules, forms,
113 33 statements of policy, and guidelines.

113 34 l. Attending conferences and other meetings among
113 35 securities regulators, which may include representatives of
114 1 governmental and private sector organizations involved in
114 2 capital formation, deemed necessary or appropriate to promote
114 3 or achieve uniformity.

114 4 m. Developing and maintaining a uniform exemption from
114 5 registration for small issuers, and taking other steps to
114 6 reduce the burden of raising investment capital by small
114 7 businesses.

114 8 Sec. 59. Section 502.609, Code 2003, is amended by

114 9 striking the section and inserting in lieu thereof the
114 10 following:
114 11 502.609 JUDICIAL REVIEW OF ORDERS.
114 12 A final order issued by the administrator under this
114 13 chapter is subject to judicial review in accordance with
114 14 chapter 17A.
114 15 Sec. 60. Section 502.610, Code 2003, is amended by
114 16 striking the section and inserting in lieu thereof the
114 17 following:
114 18 502.610 JURISDICTION.
114 19 1. SALES AND OFFERS TO SELL. Sections 502.301, 502.302,
114 20 502.401, subsection 1, 502.402, subsection 1, 502.403,
114 21 subsection 1, 502.404, subsection 1, 502.501, 502.506,
114 22 502.509, and 502.510 do not apply to a person that sells or
114 23 offers to sell a security unless the offer to sell or the sale
114 24 is made in this state or the offer to purchase or the purchase
114 25 is made and accepted in this state.
114 26 2. PURCHASES AND OFFERS TO PURCHASE. Sections 502.401,
114 27 subsection 1, 502.402, subsection 1, 502.403, subsection 1,
114 28 502.404, subsection 1, 502.501, 502.506, 502.509, and 502.510
114 29 do not apply to a person that purchases or offers to purchase
114 30 a security unless the offer to purchase or the purchase is
114 31 made in this state or the offer to sell or the sale is made
114 32 and accepted in this state.
114 33 3. OFFERS IN THIS STATE. For the purpose of this section,
114 34 an offer to sell or to purchase a security is made in this
114 35 state, whether or not either party is then present in this
115 1 state, if any of the following apply to the offer:
115 2 a. The offer originates from within this state.
115 3 b. The offer is directed by the offeror to a place in this
115 4 state and received at the place to which it is directed.
115 5 4. ACCEPTANCES IN THIS STATE. For the purpose of this
115 6 section, an offer to purchase or to sell is accepted in this
115 7 state, whether or not either party is then present in this
115 8 state, if all of the following apply to the acceptance:
115 9 a. The acceptance is communicated to the offeror in this
115 10 state and the offeree reasonably believes the offeror to be
115 11 present in this state and the acceptance is received at the
115 12 place in this state to which it is directed.
115 13 b. The acceptance has not previously been communicated to
115 14 the offeror, orally or in a record, outside this state.
115 15 5. PUBLICATIONS, RADIO, TELEVISION, OR ELECTRONIC
115 16 COMMUNICATIONS. An offer to sell or to purchase is not made
115 17 in this state when a publisher circulates or there is
115 18 circulated on the publisher's behalf in this state a bona fide
115 19 newspaper or other publication of general, regular, and paid
115 20 circulation that is not published in this state, or that is
115 21 published in this state but has had more than two-thirds of
115 22 its circulation outside this state during the previous twelve
115 23 months or when a radio or television program or other
115 24 electronic communication originating outside this state is
115 25 received in this state. A radio or television program, or
115 26 other electronic communication, is considered as having
115 27 originated in this state if either the broadcast studio or the
115 28 originating source of transmission is located in this state,
115 29 unless any of the following apply:
115 30 a. The program or communication is syndicated and
115 31 distributed from outside this state for redistribution to the
115 32 general public in this state.
115 33 b. The program or communication is supplied by a radio,
115 34 television, or other electronic network with the electronic
115 35 signal originating from outside this state for redistribution
116 1 to the general public in this state.
116 2 c. The program or communication is an electronic
116 3 communication that originates outside this state and is
116 4 captured for redistribution to the general public in this
116 5 state by a community antenna or cable, radio, cable
116 6 television, or other electronic system.
116 7 d. The program or communication consists of an electronic
116 8 communication that originates in this state, but which is not
116 9 intended for distribution to the general public in this state.
116 10 6. INVESTMENT ADVICE AND MISREPRESENTATIONS. Sections
116 11 502.403, subsection 1, 502.404, subsection 1, 502.405,
116 12 subsection 1, 502.502, 502.505, and 502.506 apply to a person
116 13 if the person engages in an act, practice, or course of
116 14 business instrumental in effecting prohibited or actionable
116 15 conduct in this state, whether or not either party is then
116 16 present in this state.
116 17 Sec. 61. Section 502.611, Code 2003, is amended by
116 18 striking the section and inserting in lieu thereof the
116 19 following:

116 20 502.611 SERVICE OF PROCESS.
116 21 1. SIGNED CONSENT TO SERVICE OF PROCESS. A consent to
116 22 service of process required by this chapter must be signed and
116 23 filed in the form required by a rule or order under this
116 24 chapter. A consent appointing the administrator the person's
116 25 agent for service of process in a noncriminal action or
116 26 proceeding against the person, or the person's successor or
116 27 personal representative under this chapter or a rule adopted
116 28 or order issued under this chapter after the consent is filed,
116 29 has the same force and validity as if the service were made
116 30 personally on the person filing the consent. A person that
116 31 has filed a consent complying with this subsection in
116 32 connection with a previous application for registration or
116 33 notice filing need not file an additional consent.
116 34 2. CONDUCT CONSTITUTING APPOINTMENT OF AGENT FOR SERVICE.
116 35 If a person, including a nonresident of this state, engages in
117 1 an act, practice, or course of business prohibited or made
117 2 actionable by this chapter or a rule adopted or order issued
117 3 under this chapter and the person has not filed a consent to
117 4 service of process under subsection 1, the act, practice, or
117 5 course of business constitutes the appointment of the
117 6 administrator as the person's agent for service of process in
117 7 a noncriminal action or proceeding against the person or the
117 8 person's successor or personal representative.
117 9 3. PROCEDURE FOR SERVICE OF PROCESS. Service under
117 10 subsection 1 or 2 may be made by providing a copy of the
117 11 process to the office of the administrator, but it is not
117 12 effective unless all of the following apply:
117 13 a. The plaintiff, which may be the administrator, promptly
117 14 sends notice of the service and a copy of the process, return
117 15 receipt requested, to the defendant or respondent at the
117 16 address set forth in the consent to service of process or, if
117 17 a consent to service of process has not been filed, at the
117 18 last known address, or takes other reasonable steps to give
117 19 notice.
117 20 b. The plaintiff files an affidavit of compliance with
117 21 this subsection in the action or proceeding on or before the
117 22 return day of the process, if any, or within the time that the
117 23 court, or the administrator in a proceeding before the
117 24 administrator, allows.
117 25 4. SERVICE IN ADMINISTRATIVE PROCEEDINGS OR CIVIL ACTIONS
117 26 BY ADMINISTRATOR. Service pursuant to subsection 3 may be
117 27 used in a proceeding before the administrator or by the
117 28 administrator in a civil action in which the administrator is
117 29 the moving party.
117 30 5. OPPORTUNITY TO DEFEND. If process is served under
117 31 subsection 3, the court, or the administrator in a proceeding
117 32 before the administrator, shall order continuances as are
117 33 necessary or appropriate to afford the defendant or respondent
117 34 reasonable opportunity to defend.
117 35 Sec. 62. NEW SECTION. 502.612 SEVERABILITY CLAUSE.
118 1 If any provision of this chapter or its application to any
118 2 person or circumstances is held invalid, the invalidity does
118 3 not affect other provisions or applications of this chapter
118 4 that can be given effect without the invalid provision or
118 5 application, and to this end the provisions of this chapter
118 6 are severable.
118 7 Sec. 63. Sections 502.205 through 502.218, 502.502A,
118 8 502.603A, and 502.604B, Code 2003, are repealed.
118 9 DIVISION II
118 10 TRANSITION PROVISIONS
118 11 Sec. 64. APPLICATION OF ACT TO EXISTING PROCEEDING AND
118 12 EXISTING RIGHTS AND DUTIES.
118 13 1. APPLICABILITY OF PREDECESSOR CHAPTER TO PENDING
118 14 PROCEEDINGS AND EXISTING RIGHTS. The predecessor chapter 502
118 15 exclusively governs all actions or proceedings that are
118 16 pending on the effective date of this Act or may be instituted
118 17 on the basis of conduct occurring before the effective date of
118 18 this Act, but a civil action shall not be maintained to
118 19 enforce any liability under the predecessor chapter unless
118 20 instituted within any period of limitation that applied when
118 21 the cause of action accrued or within five years after the
118 22 effective date of this Act, whichever is earlier.
118 23 2. CONTINUED EFFECTIVENESS UNDER PREDECESSOR CHAPTER. All
118 24 effective registrations under the predecessor chapter 502, all
118 25 administrative orders relating to the registrations, rules,
118 26 statements of policy, interpretative opinions, declaratory
118 27 rulings, no action determinations, and conditions imposed on
118 28 the registrations under the predecessor chapter 502 remain in
118 29 effect while they would have remained in effect if this Act
118 30 had not been enacted. They are considered to have been filed,

118 31 issued, or imposed under chapter 502 as amended by this Act,
118 32 but are exclusively governed by the predecessor chapter 502.
118 33 3. APPLICABILITY OF PREDECESSOR CHAPTER TO OFFERS OR
118 34 SALES. The predecessor chapter 502 exclusively applies to an
118 35 offer or sale made within one year after the effective date of
119 1 this Act pursuant to an offering made in good faith before the
119 2 effective date of this Act on the basis of an exemption
119 3 available under the predecessor chapter 502.

119 4 DIVISION III

119 5 CONFORMING CHANGES

119 6 Sec. 65. Section 22.7, subsection 42, Code Supplement
119 7 2003, is amended to read as follows:

119 8 42. Information obtained by the commissioner of insurance
119 9 in the course of an investigation as provided in section
119 10 ~~502.603, 523B.87 or 523C.23.~~

119 11 42A. Information obtained by the commissioner of insurance
119 12 pursuant to section 502.607.

119 13 Sec. 66. Section 507B.14, unnumbered paragraph 1, Code
119 14 2003, is amended to read as follows:

119 15 When a controlling interest in two or more corporations, at
119 16 least one of which is an insurance company domiciled in this
119 17 state, is held by any person, group of persons, firm, or
119 18 corporation, no exchange of stock, transfer or sale of
119 19 securities, or loan based upon securities of any such
119 20 corporation shall take place between such corporations, or
119 21 between such person, group of persons, firm or corporation and
119 22 such corporations, without first securing the approval of the
119 23 insurance commissioner. If, in the opinion of the insurance
119 24 commissioner, such sale, transfer, exchange, or loan would be
119 25 improper and would work to the detriment of any such insurance
119 26 company, the commissioner shall have the power to prohibit the
119 27 transaction. ~~Any A person, firm, or corporate officer or~~
119 28 ~~director aiding shall not aid such transaction carried out~~
119 29 ~~without approval of the insurance commissioner shall be~~
119 30 ~~deemed. A person, firm, or other corporate officer or~~

119 31 ~~director who willfully violates this provision is guilty of a~~
119 32 ~~class "D" felony and upon conviction punished as provided in~~
119 33 ~~section 502.605. A person, firm, or corporate officer or~~
119 34 ~~director who willfully violates this provision, and when such~~
119 35 ~~violation results in a loss of more than ten thousand dollars,~~
120 1 is guilty of a class "C" felony.

120 2 Sec. 67. Section 536A.22, unnumbered paragraph 2, Code
120 3 2003, is amended to read as follows:

120 4 The total amount of such thrift certificates, installment
120 5 thrift certificates, certificates of indebtedness, promissory
120 6 notes, or similar evidences of indebtedness outstanding and in
120 7 the hands of the general public shall not at any time exceed
120 8 ten times the total amount of capital, surplus, undivided
120 9 profits, and subordinated debt that gives priority to such
120 10 securities of the issuing industrial loan company. The sale
120 11 of such securities is subject to the provisions of chapter 502
120 12 and rules adopted by the superintendent of banking pursuant to
120 13 chapter 17A, ~~and shall not be construed to be exempt by reason~~
120 14 ~~of the provisions of section 502.202, subsection 10, except~~
120 15 ~~that the sale of thrift certificates or installment thrift~~
120 16 ~~certificates which are redeemable by the holder either upon~~
120 17 ~~demand or within a period not in excess of five years are~~
120 18 ~~exempt from sections 502.201 and ~~502.602~~ 502.504.~~

120 19 DIVISION IV

120 20 EFFECTIVE DATE

120 21 Sec. 68. This Act takes effect January 1, 2005.

120 24
120 25 _____
120 26 CHRISTOPHER C. RANTS
120 27 Speaker of the House

120 28
120 29 _____
120 30 JEFFREY M. LAMBERTI
120 31 President of the Senate

120 32
120 33 I hereby certify that this bill originated in the House and
120 34 is known as House File 2557, Eightieth General Assembly.

120 35
121 1
121 2
121 3 _____
121 4 MARGARET THOMSON
121 5 Chief Clerk of the House

121 6 Approved _____, 2004

121	7	
121	8	
121	9	THOMAS J. VILSACK
121	10	Governor